



An  
Bord  
Pleanála

## Inspector's Report ABP-300457-17

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<b>Development</b>	Solar PV Farm
<b>Location</b>	Ballycullane, Kilmallock, County Limerick
<b>Planning Authority</b>	Limerick City & County Council
<b>Planning Authority Reg. Ref.</b>	17/326
<b>Applicant(s)</b>	Ballycullane Solar Farm Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Ballycullane Solar Farm Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> April, 2018
<b>Inspector</b>	KevinMoore

## 1.0 Site Location and Description

- 1.1. The site of the proposed development comprises farmland approximately 1.5km north of Kilmallock in County Limerick, with frontage onto a minor local road and approximately 0.5km east of its junction with Regional Road R512. Development in the area comprises mainly one-off housing and farm buildings.

## 2.0 Proposed Development

- 2.1. The proposed development would comprise the installation of a solar PV array consisting of approximately 13.08 hectares of solar panels on ground-mounted steel frames, a single-storey delivery substation, four single-storey inverter/transformer units, drainage swales, underground cable ducts, a temporary construction compound, and ancillary development.
- 2.2. The planning application included a letter of consent from the landowner permitting the making of the application, a Planning and Environmental Report, a Screening for Appropriate Assessment Report, an Ecology Report, an Archaeological Impact Assessment, and Photomontages.

## 3.0 Planning Authority Decision

### 3.1. Decision

On 17<sup>th</sup> November 2017, Limerick City & County Council decided to grant permission for the proposed development subject to 26 conditions.

Condition 4 stated:

“4. *The developer shall pay to Limerick City & County Council a financial contribution of €127,500.00 (one hundred and twenty seven thousand five hundred 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 (as amended). 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.*

*Reason – It is a requirement of the Planning and Development Act 2000 (as amended) 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.”*

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

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

The Planner noted public policy and development plan provisions and reports received. There was a concern raised about the potential impact of the development on neighbouring houses to the north. Further information was recommended to be sought on revisions to address impact on houses to the north, a landscaping scheme, details on electromagnetic interference, drainage, access, and visual impact on national monuments in Kilmallock Town.

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

The Fire Officer had no objection to the proposal.

The Engineer in the Operation & Central Services Section requested further details on the proposed access and drainage arrangements.

The Archaeologist agreed with the recommendations in the archaeological report submitted by the applicant and referenced a condition in the event permission is granted.

The Architectural Conservation Officer recommended that contemporary sources and Military Archives should be consulted to exclude the possibility that the proposed site did not feature in the Battle of Kilmallock during the Irish Civil War.

### **3.3. Prescribed Bodies**

The Office of Public Works (OPW) stated it had no information on the flood risk status of the site and noted a chapter on hydrology and drainage in the Planning and Environmental Report.

The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs referred to the need for further information relating to an assessment of the extent to which the proposed development may have a visual impact on national monuments at Killmallock Town.

### **3.4. Third Party Observations**

An observation from Jim Slattery raised concerns about traffic and health risks.

3.5 A request for further information was issued by the planning authority on 6<sup>th</sup> June, 2107 in accordance with the Planner's recommendation and a response was received from the applicant on 24<sup>th</sup> October, 2017.

3.6 Following the receipt of the further information, the reports to the planning authority were as follows:

- A report from an Engineer requested a site specific waste management plan before initiation of works.
- The Central Services Engineer set out a schedule of conditions relating to access and drainage.
- The Planner noted the content of the further information and the internal reports received. A grant of permission was recommended 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. Limerick County Development Plan 2010-2016

#### Landscape

The site is located within a Landscape Character Area designated 'Agricultural Lowlands'.

#### Development Management Guidelines

##### *Renewable Energy Development*

##### **Solar Schemes - information required with a planning application**

- Location design, specifications, orientation, of the development,
- Location and design of control buildings and on site ancillary works if these apply,
- For solar panels on existing structures an outline of the possible visual effects of the development to be provided. For larger scale developments this may take the form of a photomontage,
- Details of grid connections, where applicable, and alterations to existing electricity cables that are open to public view are to be provided. Note, this may not be necessary in the case of stand-alone developments intended to serve individual dwellings.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of the appeal relate to Condition 4 attached with the planning authority's decision to grant permission. The appellant is requesting that the condition be reworded to the effect that the contribution fee can be calculated prior to commencement of development on a per-MW (Megawatt) of generation capacity basis. The grounds of the appeal may be synthesised as follows:

- The fee appears to have been calculated on the basis of €15,000 x 8.5 MW = €127,500. In the first instance, it should be €15,000 x 8 MW = €120,000 in accordance with the Development Contribution Scheme. The applicant made

reference to a total installed capacity of approximately 8.5MW in the originally submitted planning and environmental report. This represented an approximate estimate only. The applicant has applied for a grid connection with a generation capacity of 4.95 MW. The maximum export capacity of the site at any one time will therefore be 4.95MW.

- The differences between wind and solar energy installed capacities and generating capacities are described in support of the appeal.
- It is an unfair comparison to bracket solar energy with wind energy based on the number of panels on site, when the capacity of what can be exported to the grid on a solar site is solely determined by the rate of capacity of the inverters on the site.
- It is requested that a revised condition be attached (proposed condition included in the appeal) which requires a financial contribution of €15,000 / MWp of installed generation capacity in excess of 0.5 MWp.

## 6.2. Planning Authority Response

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

## 7.0 Assessment

- 7.1. The appeal relates solely 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. It is considered appropriate that the Board determines the appeal in relation to the disputed condition only (Condition 4 of the planning authority's decision) which relates to the financial contribution of €127,500 being sought by the planning authority. The provisions of section 48(10)(b) and (c) apply in this instance.
- 7.2. Prior to addressing the issues raised in the appeal, it is worthy to note what is required from the Board when considering an appeal against a financial contribution condition. Section 10(b) of the Planning and Development Act states that an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the planning authority's Development Contribution

Scheme have not been properly applied in respect of a condition laid down by the planning authority. Thus, what the Board is considering is whether the terms of the relevant Scheme have or have not been applied properly. The Board is not in any position to revise or make amendments to any such Scheme and makes its deliberations with regard to the Scheme from which the development contribution derives.

- 7.3. With regard to the rates of development contributions set out in Appendix A of the Limerick City & County Council Development Contribution Scheme 2017-2021, I note the following:

**“Other Categories of Development**

*8. Renewable Energy Developments      Renewable energy development with a capacity of up to .5MW will be exempt. Larger capacity development will be charged at €15,000 per each 1MW above an installed capacity of .5MW”*

Thus, it is clear that the development contribution is based upon installed capacity and that the first 0.5MW of installed capacity for a development would be exempt from a development contribution. The required development contribution is not calculated on the basis of generation capacity.

- 7.4. The application details submitted to the planning authority includes the Planning and Environmental Report which explains the nature and extent of the proposed development, anticipated planning and environmental effects, and provisions being made to address environmental matters arising. In the ‘Introduction’ (page 7), it is stated:

*“The proposed development will cover an area of approximately 13.08 ha with a total installed capacity of 8.5 MW”.*

- 7.5. The development contribution required to be made under the Development Contribution Scheme is to be calculated at a rate of €15,000 per each 1MW above an installed capacity of 0.5MW. Thus, the required contribution is as follows:

$$8\text{MW} \times €15,000 = €120,000$$

7.6. Having regard to the requirements of the Board under section 48 of the Planning and Development Act, the Board is in no position to change the existing Development Contribution Scheme applicable to Limerick City and County, i.e. to change the development contribution required to be made based upon generation capacity, which is what is being requested. The Board cannot change the terms of the Scheme but rather must consider the correct application of the terms of that Scheme.

## 8.0 Recommendation

8.1. I recommend that Conditions 4 of the planning authority's decision be revised in accordance with the following:

Having regard to the nature of condition number 4 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:

REVISE Condition number 4 as follows:

4. The developer shall pay to Limerick City & County Council a financial contribution of €120,000.00 (one hundred and twenty 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 (as amended). 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.

Reason – It is a requirement of the Planning and Development Act 2000 (as amended) 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.”



## **Reasons and Considerations**

The terms of the Limerick City & County Council Development Contribution Scheme 2017-2021 require a development contribution for renewable energy developments based upon a rate charged at €15,000 per each 1MW above an installed capacity of 0.5MW. It is considered that the terms of the development contribution scheme have, thereby, not been properly applied with regard to the exemption for 0.5MW of proposed installed capacity and the development contribution condition should be revised in this instance.

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Kevin Moore  
Senior Planning Inspector

3<sup>rd</sup> May 2018