



An
Bord
Pleanála

Inspector's Report

ABP 300970-18

Development

4.3 MVA Solar Farm consists of photovoltaic panels on grounded mounted frames, four single storey inverter/transformer stations, one single storey ESP BV substation, security fencing CCTV and all associated ancillary development works. (Glenamaddy Solar Farm.)

Location

Shannagh Beg, Glenmaddy, Co. Galway.

Planning Authority

Galway County Council

P.A. Reg. Ref.

17/1195.

Applicant

Elgin Energy Services Ltd.,

Type of Application

Permission

Decision

Grant Permission

Type of Appeal

First Party X Condition No 16.

Appellant

Elgin Energy Services Ltd.,

Inspector

Jane Dennehy.

Site Location and Description

- 1.2. The site has a stated area of 9.68 hectares and is formed from an agricultural landholding located at Shannagh Beg, approximately two kilometres to the south east of Glenamaddy. It is accessed from a minor county road off the R364.

2.0 Proposed Development

- 2.1. This is an application for permission for a ten-year period for a 4.3 MVA Solar Farm consists of photovoltaic panels on grounded mounted frames, four single storey inverter/transformer stations, one single storey ESP BV substation, security fencing CCTV and all associated ancillary development works. While the application is for permission for a ten-year period it is indicated that an operational period of thirty years is envisaged.

3.0 Planning Authority Decision

- 3.1. By order dated, 25th January, 2018 the planning authority decided to grant permission for the proposed development subject to conditions which include a requirement under Condition No 16 for payment of a development contribution of €281,281.00.

4.0 Planning History

There is no record of any planning history for the site of the proposed development

5.0 Policy Context

Development Plan

According to the Galway County Development Plan, 2015-2021 the site is agricultural land which is not within an area zoned for development. Chapter 7 and Policy Objectives ER1-ER4 provide support for renewable energy infrastructure developments

A copy of the Galway County Development Contributions Scheme 2016 which is to cover a period of seven years and which was adopted by the Members in 2016 has been placed on the file.

6.0 The Appeal

Grounds of Appeal

- 6.1. An appeal was received from Tobin Consulting Engineers on behalf of the applicant on 28th February, 2018. The appeal is solely against Condition No 16, according to which payment of a development contribution in the amount of 281,281.00 is required. It is claimed that the calculation of the amount payable is incorrect.

Condition No 16 is reproduced in full below:

“Prior to the commencement of the development the applicant/developer shall pay €281,281.00 to the Panning Authority, unless a phased payment schedule has been agreed in writing, with the Planning Authority. This charge has been calculated using the Development Contribution Scheme adopted by Galway County Council in accordance with the provisions of section 48 of the Planning and Development Act 2000.

Reason: So that the developer shall pay an equitable portion of the cost of the facilities that are provided or that it is intended will be provided by or on behalf of Galway County Council, which will facilitate the proposed development.”

The following details of the calculation of the amount payable are provided:

“Development Sub Area. - Sub Area 2

“Development Sub-type” - Solar Farm.

Charge Code Description - Roads.

Number of units - 39,340 square metres.

Unit Charge €7,15 (11 x 65%)

Line Charge- €281,281.00”

- 6.2. According to the appeal:

- The line charge is calculated by number of units X unit charge and that the number of units was based on the area of the solar panels (39,340 square

metres.) The gross floor space was calculated as to be 102.46 square metres. by the planning authority

- The contributions scheme adopted in 2016 in Part 2 states that the amount payable for industrial commercial and other development is based on gross floor area.
- Solar panels are mounted on steel frames so they do not constitute floor area and are not buildings constructed on the ground. "Floor area" as defined in Part 1, Section 3 (3) of the Planning and Development Regulations, 201 as amended as:

"...the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions) disregarding any floor space provided for the parking of vehicles by persons occupying or using the building or buildings where such floor space is incidental to the primary purpose of the building".

- The inclusion of the requirements under Condition No 16 results in duplication of the costs to be covered by the applicant under Condition No 5 attached to the grant of permission. The charge code given in the condition was "Roads". This implies that the contribution relates to the cost of potential impact on road infrastructure. The applicant is committed to fulfilling the requirements of Condition No 5 according to which there is a requirement for a survey of the condition of the roads to be undertaken pre, and post construction and an agreement with the area engineer to rectify or pay for the costs of remedying damages to the roads.
- The need for solar energy has been recognised in local and national policy; in both the National Spatial Strategy 2002-2020, (now superseded) and the Galway City Development Plan 2015-2021, Chapter 7 and Policy ER 3 therein refer. (Extracts are reproduced in the appeal submission.)
- The applicant is not able proceed with the project if payment of €281,281.00 is required. It is proposed that thirty-three per cent, of the amount payable for a wind turbine of similarly rated capacity be applied because the output of a solar farm is one third of that of a wind project with similar installation capacity. (1MW wind = 27,000,000 kilowatt hours (kWh) whereas 1 MW Solar

= 900,000 kWh.) Income is received from output and not from the capacity of the installation.

- Elgin Energy has agreed to pay development contributions of up to €29,862 based on output capacity for similar projects in Ireland. Elgin Energy has developed over two hundred projects in the UK financially assisted local community projects.

6.3. Given the foregoing, it is requested that the potential output of a renewable energy project be used as a basis for determination of the relevant contribution under the contribution scheme. It is submitted that a more transparent and quantifiable method of calculation and affordability is a consideration.

Planning Authority Response

6.4. There is no submission from the planning authority on file.

7.0 Assessment

7.1. The appeal is solely over disagreement about the amount of the development contribution payable under Condition No 16 in fulfilment of the requirements of the adopted Galway County Council Development Contribution Scheme, 2016. (the scheme.) Consideration and determination of a decision is therefore confined to adjudication on whether the terms of the scheme had been properly applied by the planning authority as provided for in section 48 (10) (b) of the Planning and Development Act, 2000 as amended. (The Act.)

7.2. It is noted and acknowledged that Condition No 5 provides for the costs of repair works to the roads on the haulage route to be met by the applicant. These requirements are specific costs to be incurred by the applicant directly attributable to road damage along a haulage route by the proposed development due to impact in wear and tear of the road surfaces. This is reasonable but it would have been more appropriate for the matter to be addressed by attachment of a condition a requirement for payment of a special development contribution in accordance with the provisions of section 48 (2) (c) of the Act. However, the terms of Condition No 5 are not open consideration in determining a decision on the appeal provisions of

which is to be determined in accordance with the provisions of section 48 (10) (b) of the Act.

- 7.3. The issue central to the determination of the decision is solely as to whether the planning authority correctly applied the terms of the scheme in the calculation of the amount payable. Section 48 (1) of the Act provides for the requirement for payment of a contribution towards the cost of infrastructure and facilities benefitting all development within the area of the planning authority to which the development contributions scheme is applicable. There is no scope within the remit of An Bord Pleanála for a discretionary departure from the terms of the scheme in determining an amount payable. The remit is confined to determination as to whether the planning authority correctly applied the terms of the adopted scheme in its calculation of the amount payable.
- 7.4. The planning authority calculated the amount based on reckonable floor area for industrial and commercial development as provided for and set out in the scheme. However, in the applicant's case that as solar panels are mounted on fixtures as opposed to constructed on the ground there can be no reckonable floor area for the development based on which the amount payable can be calculated. This assertion is considered reasonable and is accepted.
- 7.5. It is suggested in the appeal that a basis for calculation should be by reference to wind projects which are provided for separately in the adopted scheme. The adopted development contribution scheme has no specific references to renewable energy or to solar farms. The closest development description within the scheme for renewable development such as a solar farm is 'wind farms' for which megawatt capacity is reckonable for calculation of an amount payable. It is considered reasonable that megawatt capacity of windfarms be applied to solar farm development. A charge of €10,000 per megawatt capacity is applicable to wind farms according to the adopted scheme.
- 7.6. For a solar farm of 4.3 megawatts in capacity with the application of the rate prescribed in the scheme of 10,000 for each megawatt the total amount payable in total would be €43,000, (subject to indexation). (The development is understood to be a commercial rather than community based project so the reduced rate of €4,000 per megawatt would not apply.)

7.7. The argument in the appeal that output capacity for solar farms which is one third of output capacity of a wind turbine of equivalent installation capacity should form the basis for calculation of an amount payable is understandable. However, it is considered that the terms of the adopted scheme for wind farms do not have scope for the flexibility to allow for calculation of an amount payable based on output capacity.

8.0 Recommendation

8.1. In view of the foregoing, it can be concluded that the planning authority incorrectly applied the terms of the Galway County Council Development Contributions Scheme, 2016 in the calculation of the amount payable under Condition No 16 attached to the grant of permission. It is therefore recommended that the planning authority be directed to amend the amount payable under Condition No 16 by deleting the amount of €281,281.00 and substituting the amount of €43,000, which shall be subject to indexation development. Draft Reasons and Consideration and a draft revised condition follow:

9.0 Reasons and Considerations

Having regard to the nature of solar farm development which is a renewable energy project it is considered that the terms of the adopted Galway County Council Development Contributions Scheme, 2016 were incorrectly applied by the planning authority in the calculation of the amount payable based on reckonable gross floor area for industrial and commercial development. It is considered that for calculation of the applicable development charge for a solar farm which is renewable energy development the megawatt capacity is reckonable as is required for windfarm development according to the said scheme. It is therefore concluded that the amount payable, in accordance with the terms of the said scheme is €10,000 per megawatt capacity. As a result of which the total amount payable is €43,000 (subject to indexation) in that the total capacity of the solar farm 4.3 Megawatts. However, it is considered that application of a rate based on output capacity which for solar farms is equivalent to one third of the output capacity for wind turbines with similar installation capacity would fall outside the terms of the scheme.

10.0 Revised Condition

The developer shall pay to the planning authority a financial contribution of forty-three thousand euro, (€43,000) 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. 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.

Jane Dennehy

Senior Planning Inspector

31st May, 2018.