



An
Bord
Pleanála

Inspector's Report ABP-301310-18

Question

Whether the connection by electric cables from an on-site substation at a permitted windfarm at Bunnyconnellan East to a substation at Glenree, Bunnyconnellan East is or is not development or is or is not exempted development.

Location

Bonnyconnellan East,
Bonnyconnellan, Co. Mayo.

Declaration

Planning Authority

Mayo County Council

Planning Authority Reg. Ref.

P18/102

Applicant for Declaration

SC SYM Fotovoltaic Energy SRL

Planning Authority Decision

No decision on this case

Referral

Referred by

SC SYM Fotovoltaic Energy SRL

Owners/ Occupiers

(1) Aeolus Windfarms Ltd.

(2) Gerry Hennigan

- (3) Noel McGowan
- (4) John Mullarkey
- (5) Michael Grehan
- (6) Bosco Kelly
- (7) Michael Mullarkey

Date of Site Inspection

19th July 2018

Inspector

Donal Donnelly

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1.0 Site Location and Description

- 1.1. The subject site is located in the townland of Bunnyconnellan East in north-eastern Co. Mayo approximately 10km east of Ballina and 2km west of the boundary with Co. Sligo. Access to the site is off the R294 Regional Road which connects Ballina to Tobercurry through The Windy Gap in the Ox Mountains
- 1.2. The site is at an approximate elevation of 165m OD on the western slopes of the Ox Mountains. The surrounding area is characterised by blanket bogland accessed by a network of turbarry tracks. A 110kV overhead transmission line passes from north-west to south-east at the northern part of the site. The Glenree ESB substation is to the north of the site and the proposed Bunnyconnellan windfarm substation is located approximately 725m to the south thereof.

2.0 The Question

- 2.1. This referral relates to correspondence received by the referrer, SC SYM Fotovoltaic Energy SRL, from Mayo County Council on 7th March 2018 in response to the referrer seeking a Declaration pursuant to Section 5 of the Planning and Development Act, 2000 (as amended) as to whether the connection from a permitted windfarm at Bunnyconnellan East to the national grid via a substation at Glenree is or is not development or is or is not exempted development.
- 2.2. Within the Council's correspondence, the referrer's attention is drawn to the fact that a Declaration (Ref: P17/205) has already been issued on 6th June 2017 that this grid connection constitutes exempted development. In these circumstances, the Council consider that it has no jurisdiction to deal with the referrer's current request.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. As noted above, no Declaration has been issued by Mayo County Council on the current case (Ref: P18/102), and accordingly, the Council returned the applicant's fee and closed their file.

- 3.1.2. With respect to the Declaration issued under Ref: 17/205, Mayo County Council decided that the laying of an electrical grid connection along the route indicated is development and is exempted development.

4.0 Planning History

Mayo County Council Reg. Ref: 10/514 (PL16.241506)

- 4.1. The Board upheld the Council's decision to grant permission for a wind farm comprising 12 no. turbines and including a substation control building; undergrounded electrical cables linking the turbines with the substation compound; and undergrounded communication cables.
- 4.1.1. Condition 2 states that *"this permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection."* Condition 5(b) also states that cables from the turbine to the substation shall be run underground within the site.

Mayo County Council Reg. Ref: 08/617 (PL16.231189)

- 4.1.2. Permission refused for a wind farm comprising 12 no. turbines for reasons relating to hydrological impacts of the construction of the proposed development on blanket bog. The Board was not satisfied that an appropriate and adequate assessment of the effects of the development on the environment had been carried out in accordance with Article 6 (3) of the EU Habitats Directive or that the integrity of Special Areas of Conservation and Special Protection Areas would not be adversely affected by the proposed development

Mayo County Council Reg. Ref: 17/205

- 4.1.3. On 6th June 2017, Mayo County Council issued a Declaration pursuant to Section 5 of the Planning and Development Act, 2000 (as amended) that underground MV cabling and ducting linking the existing substation at Glenree to the proposed Bunnyconnellan East wind farm substation is exempted development.
- 4.1.4. This Declaration was sought by Highfield Energy Services Limited acting on behalf of Aeolus Windfarms Limited, developers of the proposed Bunnyconnellan windfarm.

- 4.1.5. The Board decided on 18th December 2018 that a 38kV underground electricity connection and associated works from Ballycumber Windfarm and an ESB substation at Kilmagig, Avoca, Co. Wicklow over a distance of c. 23.45km is development and is exempted development.

5.0 Policy Context

5.1. Mayo County Development Plan, 2014-2020

- 5.1.1. It is an objective of the Council that proposals for wind farms shall demonstrate consistency with the *Landscape Appraisal of County Mayo* with reference to the four Principal Policy Areas shown on Map 3A Landscape Protection Policy Areas and the Landscape Sensitivity Matrix (Figure 3), and the Wind Energy – Guidelines for Planning Authorities (2006).
- 5.1.2. The site is within landscape policy area 3 – Uplands, Moors, Heath or Bog.
- 5.1.3. It is an objective of the Council (EY-05) “...to support and facilitate the provision of a high quality electricity infrastructure in the County, whilst seeking to protect and maintain bio-diversity, wildlife habitats, scenic amenities, including protected views and nature conservation.”

5.2. Natural Heritage Designations

- 5.2.1. The Bunnyconnellan wind farm substation and grid connection location is approximately 1.4km west of Lough Hoe Bog SAC (site code: 000633) and proposed Natural Heritage Area. The Ox Mountains Bogs SAC and pNHA are approximately 1.6km north-east of the subject location.

6.0 The Referral

6.1. Referrer’s Case

- 6.1.1. The referrer sought a Declaration from Mayo County Council as to whether a connection by electric cables from an on-site substation at a permitted windfarm in

Bunnyconnellan East to the national grid via a substation owned and operated by ESB Networks at Glenree, Bunnyconnellan is or is development or is or is not exempted development.

6.1.2. The referrer had submitted within the Section 5 application to the Council that the grid connection from the permitted windfarm to the existing ESB substation is development and is not exempted development having regard to Section 4(4) of the Planning and Development Act, 2000 (as amended), Article 9(1)(c) of the Planning and Development Regulations, 2001 (as amended) and recent High Court case law.

6.1.3. The Declaration request can be summarised as follows:

- Lands contained in Folio MY31669 and Folio MY33457 which surround the Glenree substation are in the ownership of the applicant.
- Application for proposed wind farm under Reg. Ref: P10/514 was confined to the proposed wind farm and did not include the connection between same and the national grid.
- A mandatory EIA on the proposed windfarm (not including its connection to the national grid) was completed by An Bord Pleanála (PL16.241506) prior to making its decision on the appeal.
- The owners of land surrounding Glenree substation, including the applicant, have not been contacted by ESB/ ESB Networks in respect of the grid connection.
- In O’Grianna & Ors v. An Bord Pleanála [2014] IEHC 632 and High Court, Peart J. held that in carrying out EIA the Board had erred in failing to have regard to the cumulative effect of the entire development including grid connection.
- In Daly v. Kilonan Windfarm Ltd. [2017] IEHC 308 and High Court, Baker J. held that the grid connection was part of an overall project, and an EIA was required for the overall project. Also held that no part of the project, and *ipso facto*, no individual part treated as a standalone element, can be exempt from planning.

- EIA must be carried out for the entire project at Bunnyconnellan East, including the grid connection – Under Section 4(4) of the Act and Article 9(1)(c) of the Regulations, it cannot be exempted development.

6.1.4. After Mayo County Council decided that it had no jurisdiction to deal with the request for a Section 5 Declaration due to the previous issue of a Declaration on the matter, the applicant sought legal advice. The solicitor's response to the applicant is summarised as follows:

- Council received the application for a Declaration, accepted the prescribed fee, entered the details onto the Planning Register and assigned the reference number P18/02.
- Current application refers to a connection by electric cables (which could be overhead or underground) and not over a specific route, whereas the grid connection on the P17/205 application was by underground cables over a specified route.
- Current application clearly sets out the statutory provisions and the jurisprudence of the Courts, which govern the question asked, whereas the application under P17/205 omitted to set out such provisions or jurisprudence.
- Under Section 5, the Planning Authority must issue a declaration within the time allowed, and if it does not, the question may be referred to the Board.
- Council cannot reject the application, and consequently if and when the four week period expires, applicant would be entitled to proceed to refer the question to the Board under Section 5(3)(b).

6.2. **Owner/ occupier's responses**

6.2.1. Separate correspondences were received from Messrs. Gerry Hennigan, Noel McGowan, John Mullarkey, Michael Grehan, Bosco Kelly and Michael Mullarkey confirming that they have agreements with Aeolus Windfarms Ltd. in relation to the laying of the cable connection on their land. The landowners also state that on the 24th January 2016 the High Court refused SC SYM Fotovoltaic Energy SRL an extension of time to judicially review the previous Section 5 Declaration made by Mayo County Council. The landowners ask the Board to dismiss the current referral

as the question referred to the Board has already been decided by Mayo County Council.

6.3. Further Responses

6.3.1. The agents for the Aelous Windfarms Ltd. submitted the following comments in response to an invitation by the Board to make a submission/ observation in relation to the submission made on behalf of SC SYM Fotovoltaic Energy SRL:

- On 2nd October 2017, SC SYM Fotovoltaic Energy SRL was granted leave to judicially review the Section 5 Declaration made by Mayo County Council. However, SC SYM Fotovoltaic Energy SRL was refused an application for an extension of time on the basis that the requirements of Section 50(8) of the Planning and Development Act, 2000 (as amended) had not been satisfied. The decision of the High Court has been appealed by SC SYM Fotovoltaic Energy SRL to the Court of Appeal and a hearing date has been set for 21st June 2020.
- Court of Appeal (Hogan J. delivering judgement) held in Killross Properties Ltd. v ESB [2016] IECA 207 that the High Court cannot go behind an otherwise valid Section 5 determination, and that the development is exempted development, in the course of a Section 160 application.
- SC SYM Fotovoltaic Energy SRL by referring the question again, is mounting a collateral attack on the decision of Mayo County Council of 6th June 2017 (P17/205) and this is a clear attempt to indirectly challenge the validity of the Section 5 determination otherwise than by means of a judicial review in accordance with Section 50 of the Planning and Development Act, 2000 (as amended).
- The Board might serve notice on SC SYM Fotovoltaic Energy SRL requesting confirmation that they are not seeking a determination in respect of the same development and if not forthcoming, the referral could be dismissed pursuant to Section 133.
- Alternatively, this is an appropriate circumstance where the Board could dismiss the referral under Section 138.

- Reference to Behan v McGinley and Behan v Bank of Ireland [2008] IEHC 18 and to Ó'Caomh j. in Riordan v Ireland [2001 I.R. Vol. 4-463], which refers to the decision of Ontario High Court in Re. Lang Michener v Fabien [1987] 37 D.L.R. (4th) 685 at p. 691. Amongst other things, an indicator of proceedings which were potentially vexatious includes *“the bringing of one or more actions to determine an issue which has already been determined by a court or a competent jurisdiction.”*
- Referral should not be further considered by the Board having regard to the nature of the question raised.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

7.1.1. In order to assess whether or not the activity constitutes development that is exempted development, regard must be had to the following items of legislation:

7.1.2. Under Section 2, the following is the interpretation of ‘works’:

“...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

7.1.3. Section 3 (1) states as follows:

“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.”

7.1.4. Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act and includes (g) *“development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose.”*

7.1.5. Section 4 (4) states that *“notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be*

exempted development if an environmental impact assessment or an appropriate assessment of the development is required.”

7.1.6. Section 5 (1) states that *“if any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.”* Under subsection (3)(b), in the event that no Declaration is issued by the Planning Authority, any person who made a request for a Declaration may refer the question to the Board within 4 weeks of the date that the declaration was due to be issued.

7.1.7. It is stated under Section 177U(9) that *“in deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.”*

7.2. Planning and Development Regulations, 2001 (as amended)

7.2.1. Article 6 (1) of the Planning and Development Regulations states as follows:

“Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.”

7.2.2. The following classes of development are listed:

Class 26

The carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking.

Class 27

The carrying out by any undertaker authorised to provide an electricity service of development consisting of the construction of over-head transmission or

distribution lines for conducting electricity at a voltage not exceeding a nominal value of 20kV.

- 7.2.3. Article 9(1)(a) sets out restrictions on exemptions for development to which Article 6 relates. The following sub-articles are listed:

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

- 7.2.4. Article 9(1)(c) states that development to which Article 6 relates shall not be exempted development “*if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive.*”

8.0 Assessment

- 8.1.1. SC SYM Fotovoltaic Energy SRL sought a Declaration from Mayo County Council as to whether a connection by electric cables from an on-site substation at a permitted windfarm at Bunnyconnellan East to a substation at Glenree, Bunnyconnellan East is or is not development or is or is not exempted development. Mayo County Council issued correspondence to the applicant for Declaration drawing attention to the fact that a Declaration had already been issued (Ref: P17/205) that this particular grid connection constituted exempted development. It was therefore considered in these circumstances that the development status of the grid connection has already been determined and the Council has no jurisdiction to deal with the current request.
- 8.1.2. Notwithstanding this, it should be noted that under Section 5(3)(b) of the Planning and Development Act, 2000 (as amended), any person can make a request to a planning authority for a declaration as to what, in a particular case, is or is not

development or is or is not exempted development, and in the event that no Declaration is issued by the planning authority, the person may refer the question to the Board within four weeks of the date that the Declaration was due to be issued.

- 8.1.3. There is no provision within the Planning and Development Act, 2000 (as amended) to dismiss the referral to the Board and the referrer is not prohibited from referring the current question to the Board. The Board recently noted in a similar case (Ref: 27.RL3596) that referrals may be made by “any person” and there are no provisions whereby Section 5 declarations by planning authorities are automatically reviewed by An Bord Pleanála. There are also no provisions for public participation.
- 8.1.4. It should be noted that the referral under Ref: P17/205 was sought by the Aeolus Windfarms Limited, developers of the Bunnyconnellan windfarm, and the current referral is sought by an adjoining landowner, who considers that the proposal is not exempted development. The current referrer draws a distinction in that the current referral refers to a connection by electric cables (which could be overhead or underground) and not over a specific route, whereas the grid connection on the P17/205 Declaration was by underground cables over a specified route.

8.2. **The Question as to whether works are or are not development**

- 8.2.1. The first part of the question to be examined is whether or not 'development' has taken place within the meaning of the Act. If no development has occurred, no further question arises but if on the other hand, the connection by electric cables from an on-site substation at a permitted windfarm at Bunnyconnellan East to a substation at Grenree, Bunnyconnellan East is considered to be development, the second part of the question arises as to whether or not the development is exempted development by reference to the Act and Regulations.
- 8.2.2. Section 2 (1) of the Planning and Development Act, 2000 (as amended) provides an interpretation of 'works' as including '*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...*'. Clearly, the connection by overhead or underground electric cables, involving acts of construction, excavation, alteration, repair or renewal represents 'works' under the interpretation within the Act.

8.2.3. Section 3 (1) states that *'in this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.'*

Development would therefore take place in the form of 'works' on, over or under land in this case.

8.3. The Question as to whether or not the development is exempt

8.3.1. Article 6 (1) of the Planning and Development Regulations states that *"subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1."*

8.3.2. Under Class 26 of Part 1 of Schedule 2, *"the carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking"* is exempted development subject to Article 9.

8.3.3. Class 27 states that *"the carrying out by any undertaker authorised to provide an electricity service of development consisting of the construction of over-head transmission or distribution lines for conducting electricity at a voltage not exceeding a nominal value of 20kV"* is exempted development subject to Article 9.

8.3.4. It is stated within planning application documentation accompanying Reg. Ref: 10/514 (PL16.241506) that *"the Bunnyconnellan windfarm development, if permitted, shall connect from the wind farm control building to the new ESB transformer station via a 38kV connection, which will be subject to a separate planning application by ESB. The distance between these two connection points is c. 725m."*

Notwithstanding this, the windfarm operator (Aeolus Windfarms Limited), sought the Declaration from Mayo County Council (Ref: 17/205) as to whether or not the connection from wind farm control building to the new ESB transformer station is or is not development or is or is not exempted development.

8.3.5. Should the connection between the windfarm substation and the substation at Glenree take place via overhead distribution lines, no exemption can be claimed under Class 27 having regard to the proposed 38kV connection being in excess of

voltage of 20kV stipulated under this class. However, according to the Declaration sought by the windfarm operator under Ref: 17/205, underground MV cabling and ducting will be used to link Bunnyconnellan East windfarm substation with the substation at Glenree. This link would be exempted development subject to the Article 9, which is examined below.

8.4. Restrictions on exempted development

- 8.4.1. Under Article 9(1)(a)(viiB), development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would comprise development that would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site. In addition, it is stated under Section 177U(9) of the Planning and Development Act, 2000 (as amended) that *“in deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.”*

Appropriate Assessment Screening

- 8.4.2. An Appropriate Assessment screening exercise should determine if the effects of a development on a European site are likely and whether or not the effects are significant in light of the Conservation Objectives for the site. It should also be decided if there are cumulative effects with other projects. The precautionary principle should apply if there are significant effects that cannot be excluded, or where the likelihood is uncertain.
- 8.4.3. The first step of this stage is to identify all European sites which could potentially be affected using the Source-Pathway-Receptor model. There are two SPAs within 15km of the subject site namely Killala Bay/ Moy Estuary SPA (site code: 004036) and Lough Conn and Lough Cullin SPA (site code: 004228). These sites are c. 10km and 15km respectively from the subject site. The closest SACs to the subject site are the Lough Hoe Bog SAC (site code: 000633) located c. 1.4km to the east and the Ox Mountains Bogs SAC (site code: 002006) situated c. 1.6km north-east. The River Moy SAC (site code: 002298), Lough Nabrickkeagh Bog SAC and Killala

Bay/ Moy Estuary SAC (site code: 000458) are between 4km and 10km from the site.

- 8.4.4. Having regard to the nature and scale of the proposed development, impact pathways would be restricted to hydrological pathways. Using the source-pathway-receptor risk assessment principle, the European sites that could potentially be affected by the proposed development are those listed above in close proximity to the site. The distance to all other European Sites is in excess of 4km. It can be reasonably concluded that the proposed development would not have a significant effect individually or in combination with other plans or projects on European sites in excess of 4km from the site having regard to the conservation objectives for these European Sites, the nature of discharge from the development site, and the source-pathway-receptor risk assessment principle.
- 8.4.5. The conservation objectives for Lough Hoe Bog SAC is to maintain or restore the favourable conservation condition of Oligotrophic waters containing very few minerals of sandy plains; Blanket bogs (* if active bog); Geyer's Whorl Snail; and White-clawed Crayfish.
- 8.4.6. The conservation objectives for the Ox Mountains Bogs SAC is to maintain or restore the favourable conservation condition of the following:
- Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae)
 - Natural dystrophic lakes and ponds
 - Northern Atlantic wet heaths with Erica tetralix
 - European dry heaths
 - Blanket bogs
 - Transition mires and quaking bogs
 - Depressions on peat substrates of the Rhynchosporion
 - Geyer's Whorl Snail
 - Saxifraga hirculus

- 8.4.7. The main potential for likely and significant effects on European sites from the proposed grid connection is from water run-off and contamination during the excavation and construction phase. However, having regard to the nature and scale of works required to undertake the grid connection over a distance of c. 725m and the presence of an existing gravel track along the route between the substations, and by reason of the intervening distance and the lower level of the site of the grid connection relative to the nearest European Sites, it can be concluded that the development in question would not be likely to give rise to significant effects. As the underground cable would not have any direct or indirect impacts on any Natura site, it can reasonably be concluded that in-combination effects do not arise.
- 8.4.8. It should also be noted that Mayo County Council carried out a screening assessment as part of the Section 5 Declaration under Ref: 17/205 and concluded that based on the nature of the development and the distances of the proposed cable route from the nearest Natura 2000 sites, a Stage 2 Appropriate Assessment (NIS) is not required.
- 8.4.9. It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Sites No's: 000633 and 002006 or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required. On the basis of the foregoing, I am satisfied that the development is not de-exempt by reason of Article 9(1)(a)(viiB).
- 8.4.10. Article 9(1)(a)(viiC) de-exempts development that would have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000. The nearest pNHAs coincide with the locations of the Lough Hoe Bog SAC and the Ox Mountains Bogs SAC. For the reasons outlined in the appropriate assessment screening, I am satisfied that the grid connection in question will not have an adverse impact on the nearest designated pNHAs.

EIA Screening

- 8.4.11. Under Article 9(1)(c), development to which Article 6 relates shall not be exempted development for the purposes of the Act if it is development to which Part 10 applies,

unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive.

- 8.4.12. The referrer considers that the grid connection works at Bunnyconnellan East are part of an overall project, and as an EIA was required for one part of that project being a wind farm, an EIA must be carried out of the entire project including the grid connection. Accordingly, it is submitted that as the grid connection requires an EIA under Section 4(4) of the Planning and Development Act, 2000 (as amended) and Article 9(1)(c) of the Planning and Development Regulations, 2001 (as amended), it cannot be exempted development.
- 8.4.13. Schedule 7 of the Planning and Development Regulations, 2001 (as amended) sets out the criteria for determining whether development listed in Part 2 of Schedule 5 should be subject to an Environmental Impact Assessment. An assessment of the grid connection relative to each of these criteria is included as follows:

Characteristics of the proposed development

- 8.4.14. The 38kV grid connection would continue a distance of c. 725m alongside or underneath an existing gravel road/ turbarry track between the existing Glenree substation and the Bunnyconnellan windfarm substation. There is an existing 110kV overhead power line running east - west to the north of the windfarm site and the new Glenree 110/38kV transformer station will act as a connection node for windfarms in this area.
- 8.4.15. An Environmental Impact Assessment was carried out by the Board for Bunnyconnellan windfarm (PL16.241504) and it was concluded that this development would not have a significant effect on the environment. The Board considered the EIS submitted with the application, further submissions and observations, and the Inspector's assessment of the environmental impacts, which the Board adopted in whole. The Inspector considered that the cumulative visual impacts with other windfarms is not of such significance as to warrant a refusal of permission and that no other significant cumulative impacts are anticipated given the separation distances involved between the application site and other existing, permitted or proposed windfarms. It should be noted that grid connections for other windfarms will also connect into the Glenree substation; however, it is not considered

that nearby windfarms and associated grid connections would cause significant in-combination effects.

- 8.4.16. There are no known demolition works, use of natural resources, significant production of waste, pollution and nuisance or risk of accidents associated with the grid connection over the distance of c. 725m.

Location of proposed development

- 8.4.17. The existing land uses comprising a loose gravel roadway and adjoining bogland/ ditches would be reinstated and if necessary recolonised after the laying of the grid connection cables. It is not likely that land, soil, water or biodiversity would be significantly affected and any minor environmental change is likely to be temporary and capable of being absorbed and regenerated. An appropriate assessment screening has been undertaken for the grid connection and it is concluded that, individually or in combination with other plans or projects, there will be no direct or indirect impacts on any European Sites.

Types and characteristics of potential impacts

- 8.4.18. The proposed grid connection is minor in extent being only c. 725m in length along an existing roadway/ track. This is a remote upland area and there is no resident population that would be affected by this development. The works would be mostly confined to the roadway and possibly narrow strips on one or both sides. It is likely that conventional drainage methodologies would be used to avoid sedimentation or impacts on adjoining bogland/ ditches. The duration of construction works is likely to be short term and the nature of any impact on population and human health; biodiversity; land, soil, water, air and climate; material assets, cultural heritage and landscape; and the interaction between these factors is likely to be minor/ negligible. Permission for the Bunneyconnellan windfarm has been granted for 25 years and when the development ceases, the grid connection cables can be removed and the affected lands can be reinstated.
- 8.4.19. With respect to the cumulation of the impacts other existing and/ or proposed developments, it is noted that an Environmental Impact Assessment was carried out by the Board for the Bunnyconnellan windfarm. Potential cumulative impacts with the Carrowleagh windfarm located approximately 3.5km north of the subject site were identified and it was considered that there were no significant in combination

impacts. Grid connections have been permitted to the Glenree substation including a 5km 38kV overhead line from the Carrowleagh windfarm (Reg. Ref: 1081) and a 20kV underground grid connection cable extending to c. 6.43km (Reg. Ref: 16822) to serve a permitted wind farm at Tawnamore, Co. Sligo (Ref: PL21.241637).

- 8.4.20. The above cases were granted permission by Mayo County Council and would have been assessed individually and in combination with other plans and projects. The grid connection between Bunnyconnellan windfarm and Glenree substation is minor in comparison to these other projects. It may therefore be reasonably concluded that likely significant in-combination and/or cumulative effects with the permitted Bunnyconnellan windfarm development, or any other windfarm development and associated grid connection does not arise.
- 8.4.21. Where the Board has previously determined that the mitigation measures proposed and the residual effects from the Bunnyconnellan windfarm development itself are acceptable, and where it has been determined that the grid connection would not likely have any significant environmental impacts or significant cumulative impacts with the wind farm development, then it is reasonable to conclude that the overall project is not likely to have any significant impacts on the environment.
- 8.4.22. It can therefore be concluded that the de-exemption under Article 9(1)(c) does not apply in this case. Furthermore, the development does not fall within the scope of Section 4(4) of the Planning and Development Act, 2000 (as amended) which states that exempted development under Section 4(1)(a), (i), (ia) and (l) and any regulations under Section 4(2) shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

8.5. Case Law

- 8.5.1. In *O’Grianna & Ors v An Bord Pleanála* [2014] IEHC 632, the High Court held that grid connection works formed part of an overall wind farm project where EIA was required to be carried out in order to avoid ‘project splitting’. Therefore, the cumulative impact of the wind farm and grid connection needed to be considered in order to comply with the EIA Directive. In *Daly v Kilronan Windfarm Ltd* [2017] IEHC 308 it was held that “...as *grid connection works are part of an overall project, and an*

EIA is required for the overall project, an environmental assessment must be carried out of the entire project, and, therefore, no part of the project, and ipso facto no individual part treated as a standalone element, can be exempt from planning.” It would appear, therefore, that grid connections for windfarms that are subject to EIA cannot be exempted.

- 8.5.2. Notwithstanding this, I note the Board’s recent decision under RL3596 where it was decided that an underground electricity connection and associated works over a distance of approximately 23.45km forming part of the windfarm project of the Ballycumber Wind Farm in Co. Wicklow “...*would not be likely to have significant impacts on the environment over and above those already considered and assessed as part of the Environmental Impact Assessment for that windfarm, and in combination with the windfarm, and that, therefore, an Environmental Impact Assessment for the connection and associated works would not be required. Accordingly, the provisions of Section 4 (4) of the Planning and Development Act, 2000, as amended, do not apply in this instance, and the development is exempted development.”*
- 8.5.3. The Board also noted the detailed Screening for EIA carried out by the Inspector in this case and agreed with the conclusion that the proposed grid connection would not be likely to have any significant environmental impacts, or significant cumulative impacts with the windfarm development for which EIA had already been carried out. Accordingly, the Board considered in this case that the proposed grid connection and associated works would not be likely to have significant impacts on the environment over and above those already considered and assessed as part of the EIA for the windfarm and therefore, the circumstances in this case are different to those to which the High Court case relates.
- 8.5.4. In my opinion, the current case is similar in many respect to the above case. I have carried out Screening for EIA and would be satisfied that the grid connection and associated works forming part of the Bunnyconnellan windfarm development would not be likely to have significant impacts on the environment over and above those already considered and assessed as part of the Environmental Impact Assessment for that windfarm, and in combination with the windfarm. I therefore conclude that the provisions of Section 4(4) of the Planning and Development Act, 2000 (as amended), or Article 9(1)(c) of the Planning and Development Regulations, 2001 (as

amended) do not apply in this instance and accordingly, the grid connection from an on-site substation on the permitted windfarm at Bunnyconnellan East to an ESB substation at Glenree, Bunnyconnellan East is development and is exempted development.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the connection from a permitted windfarm at Bunnyconnellan East to the national grid via a substation at Glenree, Bunnyconnellan East is or is not development or is or is not exempted development:

AND WHEREAS SC SYM Fotovoltaic Energy SRL requested a declaration on this question from Mayo County Council on the 15th day of February, 2018, but the Council failed to issue a declaration;

AND WHEREAS SC SYM Fotovoltaic Energy SRL referred this question to An Bord Pleanála for determination on the 21st day of March, 2018 under Section 5(3)(b) of the Planning and Development Act, 2000 (as amended):

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2, 3, 4, 172(1) and 177U(9) of the Planning and Development Act, 2000, as amended,
- (b) Article 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001 (as amended),

- (d) the planning history of the site and of the windfarm in question,
- (e) the documentation and submissions on file,
- (f) The Inspector's Report, including his EIA screening, and
- (g) Relevant case law, including in particular *O'Grianna (and Others) - v - An Bord Pleanála (and others)* [2014] IEHC 632, and *Patrick Daly - v - Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the provision of the underground electricity connection and associated works involves the carrying out of works and, therefore, constitutes development, under sections 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) the underground electricity grid connection involves works carried out by an electricity undertaking, and, having regard to the nature of those works, would come within the scope of Class 26 of Part 1 of the Second Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (c) it is considered that the underground electricity connection and associated works, while forming part of the windfarm project of the Bunnyconnellan East Wind Farm, would not be likely to have significant impacts on the environment over and above those already considered and assessed as part of the Environmental Impact Assessment for that windfarm, and in combination with the windfarm, and that, therefore, an Environmental Impact Assessment for the connection and associated works would not be required. Accordingly, the provisions of Section 4 (4) of the Planning and Development Act, 2000, as amended, and Article 9(1)(c) of the Planning and Development Regulations, 2001, as amended do not apply in this instance, and the development is exempted development, and

(d) there are no other restrictions on exemption, set out in the Act and Regulations, that would apply in this instance.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) of the 2000 Act, hereby decides that the connection from a permitted windfarm at Bunnyconnellan East to the national grid via a substation at Glenree, Bunnyconnellan East is development and is exempted development.

Donal Donnelly
Planning Inspector

11th January 2019