



An
Bord
Pleanála

Inspector's Report ABP 306431-20

Question

Whether or not the construction of 220kV Shunt Reactors, associated internal compound and associated equipment within the existing Ballyvouskill 220/110kV electricity substation constitutes exempted development.

Location

Ballyvouskill Electricity Substation, Caherdowney, Co. Cork.

Declaration

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

D303/19

Applicant for Declaration

Eirgrid Plc

Planning Authority Decision

Is not exempted development

Referred by

Eirgrid Plc

Owner/Occupier

Eirgrid Plc

Observer(s)

None

Date of Site Inspection

08/02/20

Inspector

Pauline Fitzpatrick

Note: The Board is advised that there is a current Strategic Infrastructure pre-application consultation request before it for the development which is the subject of this referral. File ref. ABP 306383-20 refers.

1.0 **Site Location and Description**

The existing 220/110kV electricity substation is located in the townland of Caherdowney c. 6km to the southwest of Millstreet, County Cork. The substation was developed on foot of an approval granted under reference number PL04.VA0008.

The existing substation is bounded by agricultural land to the south, west and north. The lands to the immediate east are under commercial forestry. Access to the site is via local road L5226 off the R582. There are existing overhead line connections to the substation from the east. There are also underground cable connections.

2.0 **The Question**

Whether or not the construction of 220kV Shunt Reactors with associated internal compound and associated equipment within the existing Ballyvouskill 220/110kV Electricity Substation constitutes exempted development.

3.0 **Planning Authority Declaration**

3.1. **Declaration**

The development is not exempted development.

Reason for Decision

Having regard to:

- Section 4(1) of the Planning and Development Act 2000 as amended
- Article 16 of the Planning and Development Regulations, 2001, as amended
- The planning history of the site and surrounding area

It is concluded that the proposal goes beyond what can be considered an amendment to existing apparatus (as per Section 4(1)(g)). It is considered that the proposal would involve the introduction of a new device to the site to facilitate a new or additional mechanism/process on site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report states:

- The applicant has not demonstrated that the proposed development actually amounts to 'works for the purpose of altering other apparatus'.
- Having regard to the applicant's description of the development ie. a temporary shunt reactor unit which will be placed within the existing substation to provide a temporary solution until the permanent permitted STATCOM development is operational, it is considered that the proposed development would, in fact, introduce a new technology/mechanism to the existing substation site, rather than an amendment to the existing operation of the site. It is suggested that the proposed development need not be within the substation site itself for it to be able to operate, but that it can more easily be presented as an 'amendment' to the existing substation (apparatus) on that basis. In this context regard is had to the Board's determination that the proposed STATCOM infrastructure was deemed to require permission and therefore the development of a temporary shunt reactor unit as proposed, may also require permission.
- In terms of applicability of Class 16, Part 1 of Schedule 2, Planning and Development Regulations, 2001 as amended, it is questioned whether the planned reactor units are needed temporarily in connection with the existing substation rather than in connection with the permitted development while it is being carried out. Class 16 cannot be relied on in this instance.
- The cases cited as precedent are for more common amendments to existing facilities.

- It is considered that the proposal goes beyond what can be considered as an amendment to existing apparatus as per Section 4(1)(g). It is considered that it would involve the introduction of a new device to facilitate a new or additional mechanism/process on site.
- It is considered the proposal would require permission.

3.2.2. Other Technical Reports

Area Engineer has no issue with the proposed development.

Senior Executive Scientist, Environment Section has no objection.

Heritage Unit Planner has no issues in relation to the AA as submitted.

4.0 Planning History

VA0008 – approval granted in 2012 for 220kV/110kV substation and associated transmission lines.

VM0008 – alteration to 220/110kV substation and associated transmission lines.

ABP 301174-18 – the Board decided that the development of STATCOM devices at the existing substation was not Strategic Infrastructure and that an application be made to Cork County Council.

18/06438 – permission granted for a 100 Mvar STATCOM transformer development at the substation. The permitted development entails an extension to the existing substation.

ABP 301173-18 – the Board decided that the development of a battery energy storage facility comprising a 110kV substation on a site adjacent to the substation was not Strategic Infrastructure and that an application be made to Cork County Council. The prospective applicant was Redfaze Ltd.

18/4182 – permission granted for a battery energy storage facility, comprising a 110kV substation on a site to the south-west of the substation.

18/5686 – permission granted for a battery energy storage facility comprising a 110kV substation on a site to the south of the substation.

ABP 306383-20 – current Strategic Infrastructure pre-application consultation under section 182E of the Planning and Development Act, 2000, as amended. The development is the same as that subject of this referral.

5.0 Policy Context

5.1. Development Plan

The Cork County Development Plan 2014 refers. The site is not within a High Value Landscape.

Objectives ED 6-1 and ED 6-2 relate to the electricity and transmission networks.

5.2. Natural Heritage Designations

Mullaghanish to Musheramore Mountains SPA is c. 250 metres to the north of the existing substation.

6.0 The Referral

6.1. Referrer's Case

The submission by Eirgrid Plc, which is accompanied by supporting documentation, can be summarised as follows:

- The development is part of the statutory undertaker's routine function required to operate transmission infrastructure in a safe, secure and reliable manner. Eirgrid is a statutory undertaker for the purposes of electricity transmission.
- No material change is taking place at the electrical substation. Following installation, it will remain an electrical substation. The same mechanism/process ie. the transmission and distribution of electricity will continue on site. No additional land take or extension to the substation compound is required. The installation will occur at the portion of the site where the principle of development is well established, is made ground and is expected to host such electrical apparatus.

- The scale of the development is not material in the context of the character of the existing structures. Existing structures measure a maximum of 45 metres (pylons), 20.5 metres (gantries), 16.5 metres (220kV GIS building), 15 metres (lightning monopole) and 10 metres (busbar and transformers).
- The works do not materially affect the external appearance of the substation as to render the appearance inconsistent with the character of the substation or neighbouring apparatus.
- Sections 4(1)(g) and (4)(1)(h) do not explicitly prohibit the introduction of new apparatus to existing sites. These sections provide for altering and renewing transmission apparatus (ie. substations). There doesn't necessarily have to be an exact replication of apparatus. These provisions of the Planning Act were introduced specifically to facilitate this type of renewal project where, in planning terms, no material change is taking place.
- In terms of the above sections, precedent has been set by referral case RL3080 and legal case McCabe v. CIE & Anor [2006] IEHC 356.
- There are other precedents for electrical apparatus within existing substations. RL3364 and RL3316 referenced. Further list of precedent cases at local authority level also given.
- Stage 1 Screening for AA concluded that Stage 2 AA is not required (copy attached). Similarly, it is concluded that EIA is not required either. Therefore, the restrictions of Section 4(4) of the Act do not apply.
- No other restrictions to exempted development are applicable.

6.2. **Planning Authority Response**

No further comment to make.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000**

Planning and Development Act, 2000, as amended.

Section 2 (1) states as follows:- In this Act, except where the context otherwise requires –

'statutory undertaker' means a person, for the time being, authorised by or under any enactment or instrument under an enactment to –

(b) provide or carry out works for the provisions of, gas, electricity or telecommunications services, or

(c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking.

'structure' means any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined....

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....

Section 3 (1) states as follows:-

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

Section 4 (1)(g) indicates that the following is exempted development:-

Development consisting of the carrying out by any local authority or statutory undertaker of any works for the provision 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.

Section 4 (1)(h) indicates that the following is exempted development:-

development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Section 4 (2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001 (as amended).

Section 4(4) states:

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.

7.2. Planning and Development Regulations, 2001 as amended.

Schedule 2, Part 1 Exempted Development – Development by statutory undertakers. Class 26, 27, 28, 29 and 29A refer to electricity service and electricity undertaking.

8.0 Relevant Precedent

RL3316 - Question as to whether the extension of the existing medium voltage busbar and the construction of a cable chair within the existing Kilmagig 38kV electricity substation is or is not exempted development. The Board concluded that the proposed development consists of the carrying out by a statutory undertaker of works for the purpose of renewing and altering or removing the apparatus and would, therefore, come within the exempted development provisions of section 4(1)(g) of the Planning and Development Act 2000.

RL3364 – Question as to whether modification within an existing substation consisting of a new 38kV bay and associated equipment, new 110kV neutral, new arc suppression coil and associated works is or is not exempted development. The Board concluded that the proposed development

- (a) consists of the carrying out by a statutory undertaker of works for the purpose of renewing and altering or removing the apparatus and would, therefore, come within the exempted development provisions of section 4(1)(g) of the Planning and Development Act 2000 and
- (b) consists of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of a structure or which do not materially affect the external appearance of a structure so as to render the appearance inconsistent with the character of the

structure or neighbouring structures and would, therefore, come within the provisions of Section 4(1)(h) of the Planning and Development Act, 2000.

9.0 **Assessment**

At the outset I note that Eirgrid Plc is a statutory undertaker for the purposes of Section 4(1)(g) and as defined under Section 2 of the Act.

9.1. **Is or is not development**

The proposal is development under Section 3 of the Act as it consists of the carrying out of works on land.

9.2. **Is or is not exempted development**

The development is to be located within the centre of the existing 220/110kV substation. It is to include:

- A 220kV Shunt Reactor unit (3 phases) measuring 10 metres in height, located within an internal compound with a footprint of approx. 13m x 18m.
- Associated lightning monopole approx. 15 metres in height.
- Associated and ancillary substation apparatus ranging 7-10 metres in height including cable sealing ends, arrestor, coupling capacitor, combined CT/VT, post insulator and all associated cabling within the substation compound.

In view of the voltage of the substation the exempted development provisions set out in Classes 26 to 29A Schedule 2, Part 1 - Exempted Development of the Planning and Development Regulations, 2001, as amended, do not apply.

The referrer states that a shunt reactor is an apparatus commonly used by statutory undertakers on high-voltage transmission lines. It improves the performance, quality and security of the transmission infrastructure in the area. As per the details given in the section 5 application to Cork County Council the development is identified as being a temporary development until the permanent STATCOM development granted permission under ref. 18/08428 is operational. The said permission entails the extension of the substation to accommodate the development.

In terms of Section 4 (1)(g) of the Act which details works undertaken by a statutory undertaker which are exempted development the substantive consideration is whether those proposed are for the provision 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 purposes.

In the context of the precedent detailed above and the purpose of the works which will not alter the mechanism/processes of the substation ie. the transmission and distribution of electricity, the works can be considered as *altering* of the substation apparatus and, therefore, can be considered to come within Section 4(1)(g) of the Act. The fact that the works may be temporary until the STATCOM development is realised is not, in my opinion, a material consideration. I also note that the issue before the Board under ref. PL04.301174 was whether the development of STATCOM devices at the existing substation was Strategic Infrastructure and not whether the works were or were not exempted development. The fact that permission was sought for the STATCOM does not, by extension, confer that permission is required to be sought for the works subject of this referral. I note that the said development as permitted by the local authority following the Board's determination under ref. PL04.301174 entails the extension of the substation.

The substation is set back from the local road with a band of trees providing a level of screening. The 220kV building and overhead line to the east visible from the road. In terms of section 4 (1)(h) the works are to be undertaken in the centre of an existing substation and in the context of their nature and scale which are comparable to existing apparatus, I submit that the development consisting of the carrying out of works for improvement or other alteration of the substation would not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure.

9.3. Restrictions on exempted development

Section 4(4) of the Act precludes exempted development status should an environmental impact assessment or an appropriate assessment of the development be required.

Environmental Impact Assessment

The proposed works do not come within a class of development set out in Schedule 5 of the Planning and Development Regulations, 2001, as amended, for which Environmental Impact Assessment is required.

Appropriate Assessment

The section 5 referral to the planning authority was accompanied by an Appropriate Assessment Screening Report.

Project Description and Characteristics

The proposal is for the insertion of equipment into an existing substation to provide for security of transmission.

Natura 2000 Sites, Qualifying Interests and Conservation Objectives

1. Mullaghanish to Musheramore Mountains SPA (site code 4162) c. 0.25km to the south-east. The qualifying interest is the Hen Harrier. To date generic conservation objectives apply, the overall aim being to maintain or restore the favourable conservation status of the said species.
2. Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 00365) c. 4.1km to the north-west. The qualifying interests comprise a mix of freshwater species and habitats and upland heaths. Detailed conservation objectives have been prepared, the overall aim being to maintain or restore the favourable conservation status of the said habitats and species.
3. Blackwater River (Cork/Waterford) SAC (site code 2170) c. 4.1km to the north. The qualifying interests comprise a mix of aquatic and freshwater species and habitats. Detailed conservation objectives have been prepared, the overall aim being to maintain or restore the favourable conservation status of the said habitats and species.
4. Mullaghanish Bog SAC (site code 1890) c. 4.4km to the east. The qualifying interest is Blanket Bog. Detailed conservation objectives have been prepared, the overall aim being to restore the favourable condition of the habitat.

Assessment of Likely Effects

The site is not within or adjacent to any designated site. Therefore, no direct impact would arise.

In view of the separation distance and lack of hydrologic connection to:

- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 00365).
- Blackwater River (Cork/Waterford) SAC (site code 2170)
- Mullaghanish Bog SAC (site code 1890)

there is no potential for the designated sites to be indirectly affected by the proposed development.

Mullaghanish to Musheramore Mountains SPA (site code 4162) is c. 0.25km to the south-east. The qualifying interest is the Hen Harrier. There are no records of foraging hen harriers within 1km of the proposed development site. NPWS has confirmed that the most recent published data from the last National Survey in 2015 found no nesting hen harrier within 5km of the proposed development. An area of scrubby clear fell located 120 metres from the substation has the potential to host breeding hen harrier but it is considered suboptimal due to its location in proximity to the existing substation and the regional road. There is a coniferous shelter belt inbetween.

In terms of the construction phase and disturbance from noise no piling or blasting is required. Significant disturbance beyond the fence line is not predicted given the localized nature of the works.

Given the predicted absence of nesting hen harrier in the vicinity and given that no vegetation will be removed for the proposed development no impacts during the operational phase are predicted.

Collision risk and electrocution of birds can be scoped out as the proposed infrastructure elements, which do not exceed 15 metres in height, are similar in height to existing substation and powerline infrastructure.

In view of the above there is no potential for the designated site to be indirectly affected by the proposed development.

In terms of cumulative effects, I have regard to the development permitted in the vicinity of the substation as detailed in section 4 above. In combination, construction disturbance can be excluded because the presence of nesting hen harrier has been excluded.

Screening Statement and Conclusions

It is reasonable to conclude that on the basis of the information on 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 Site no. 4162 in view of the site's conservation objectives and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the project on any European Site.

Exempted Development Restrictions – Conclusion

In view of the above I do not consider that Section 4(4) of the Act applies in that neither an EIA or AA would be required for the proposed development.

10.0 Recommendation

10.1. 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 construction of 220kV Shunt Reactors with associated internal compound and associated equipment within the existing Ballyvouskill 220/110kV electricity substation is or is not development or is or is not exempted development:

AND WHEREAS Eirgrid Plc requested a declaration on this question from Cork County Council and the Council issued a declaration on the 19th day of December, 2019 stating that the matter was development and was not exempted development:

AND WHEREAS Eirgrid Plc referred this declaration for review to An Bord Pleanála on the 16th day of January, 2020:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(g) and Section (1)(h) of the Planning and Development Act, 2000, as amended,
- (d) the planning history of the site,
- (e) the nature and extent of the proposed works

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the proposed development consists of the carrying out by a statutory undertaker of works for the purpose of altering apparatus and would, therefore, come within the exempted development provisions of section 4(1)(g) of the Planning and Development Act 2000, as amended, and
- (b) the proposed development consists of carrying out of works for the maintenance, improvement or alteration or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures and would, therefore, come within the provisions of Section 4(1)(h) of the Planning and Development Act, 2000, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the construction of 200kV Shunt Reactors with associated internal compound and associated equipment within the existing Ballyvouskill 220/110kV Electricity Substation is development and is exempted development.

Pauline Fitzpatrick
Senior Planning Inspector

March, 2020