



An
Bord
Pleanála

Inspector's Report 307454-20

Question	Whether an underground 20 kV medium voltage cable within the public road between a permitted solar farm and a 38 kV substation, is or not development, or is or is not exempted development
Location	Creevyquin, Co. Roscommon
Declaration	
Planning Authority	Roscommon County Council
Planning Authority Reg. Ref.	DED 383
Applicant for Declaration	Power Capital Renewable Energy Ltd.
Planning Authority Decision	Is development that is not exempted development
Referral	
Referred By	Power Capital Renewable Energy Ltd.
Owner/Occupier	N/A
Observer(s)	None
Date of Site Inspection	21 st September 2020

1.0 Site Location and Description

- 1.1. The site is located in the rural townland of Creevyquin, approximately 2 km to the north-east of Roscommon, Co. Roscommon. The site extends between an existing 38kV substation compound located on the N63 national primary route and a permitted solar farm (Creevy Solar Park) accessed via local road L1811.
- 1.2. The N63 is a 2-lane carriageway with a hard shoulder on either side, bounded by mature hedgerows, with a number of agricultural and residential entrances. The 38kV substation compound is located on the northern side of the road and is set-back behind palisade fencing. A ringfort site (RO040-24) is located adjacent to the western boundary of the compound.
- 1.3. The L1811 extends in a south-easterly direction from the N63 on the approach to Roscommon town. It is a 2-lane carriageway, with no hard shoulder or grass verges on either side. The Creevyquin stream flows under the road at its north-western end, with a bridge structure present at this location. The lands adjoining the local road are generally agricultural in nature, with pockets of ribbon development.
- 1.4. The site of the permitted solar farm is located on the northern side of the L1811, approx. 1.3 km to the south-east of the junction with the N63. The solar farm permission had not been implemented at the time of my inspection. The site of a large enclosure (RO040-027) adjoins the western boundary of the permitted solar farm.

2.0 Application for Declaration

- 2.1. The application was lodged with Roscommon County Council on 10th March 2020. The submitted documentation includes the following:
 - Application Form
 - Cover Letter
 - Maps and Drawings
 - Copy of Grant of Permission for Planning Authority Reg. Ref. DD/17/28
 - Appropriate Assessment – Stage 1 Screening Report

- Outline Construction Methodology

2.2. The proposal includes for the following:

- An underground grid connection of 1.96 km in length extending in a south-westerly direction along the N63 national primary route and in a south-easterly direction along local road L1811;
- The connection will transmit power from the on-site substation within a permitted solar farm (Planning Authority Reg. Ref. PD/17/28) on the northern side of the L1811 and the existing 38kV Roscommon substation compound located on the northern side of the N63;
- The underground cable works will consist of the installation of 1 no. 125 mm diameter power duct in an excavated trench of approx. 325 mm wide x 925 mm deep to accommodate 3 no. power cables;
- The grid connection will be installed in the carriageway verge on the N63 and within the carriageway of the local secondary route (L-1811);
- 1 no. bridge crossing is required, which will be achieved using Horizontal Direction Drilling (HDD) under the Creevyquin stream at the north-western end of the L-1811.

3.0 The Question

3.1. Based on the information which was submitted to Roscommon County Council by the referrer on 9th March 2020 and to the Board on 30th June 2020, I consider that the question before the Board is **whether the construction of an underground 20 kV medium voltage cable within the public road between a permitted solar farm and a 38 kV substation, is or is not, development, and is or is not, exempted development?**

4.0 Planning Authority Declaration

4.1. Declaration

4.1.1. A declaration was issued by Roscommon County Council on 4th June 2020, which can be summarised as follows:

- (1) The proposed development constitutes development as defined in the Planning and Development Act 2000 (as amended) and associated Regulations;
- (2) The likelihood of significant effects from the proposed development on the conservation objectives of European sites, in particular Lough Ree SAC and Lough Ree SPA cannot be excluded, and a Stage 2 AA is required;
- (3) The possibility of the proposed development endangering public safety by reason of traffic hazard or obstruction of road users cannot be ruled out and therefore the said works cannot avail of any exemptions that might otherwise be available under Section 9 of the Planning and Development Regulations, 2001 (as amended);
- (4) The proposed development is not exempted development as defined in the Planning and Development Act 2000 (as amended) and associated Regulations.

5.0 Planning Authority Reports

5.1. Planning Report (3rd June 2020)

- 5.2. Roscommon County Council's Planning Officer considered that the proposal would constitute "works" and "development" within the meaning of the Act.
- 5.3. The Planning Officer noted that the Referrer's AA screening report identified a hydrological link between the application site and Lough Ree SAC and SPA. It was further noted that best practice measures will be implemented during the construction of the underground grid connection to avoid or reduce harmful effects on the European sites. As such, the Planning Officer concluded that there was not sufficient certainty to conclude that significant impacts on European sites could be ruled out and that a Stage 2 Appropriate Assessment was required. Thus, it was considered that the development would not constitute exempted development.
- 5.4. The Planning Officer further considered that the possibility of the proposed development endangering public safety by reason of traffic hazard, or obstruction of road users, could not be ruled out. As such, it was considered that the development

did not constitute exempted development with reference to Article 9(1)(a)(iii) of the Planning and Development Regulations, 2001 (as amended).

5.5. Other Technical Reports

5.5.1. None.

6.0 Planning History

6.1. **Planning Authority Reg. Ref. PD/17/28; ABP Ref. PL20.248780:** Planning permission granted for a 10-year period on 23rd March 2018 for the development of a solar photovoltaic energy development at Creevyquin, Roscommon, Co. Roscommon.

6.2. **Condition no. 4** of this permission is as follows:

“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.

Reason: In the interest of clarity”.

6.3. **Planning Authority Reg. Ref. 07/368; ABP Ref. PL20.223607:** Planning permission granted on 2nd October 2007 for development at existing 38 kV substation including construction of a new 38 kV conductor and switch gear modules, unit sub-plinth, new banded transformer and new plinths, oil interceptor, circuit breaker plinth, 3 no. cable chairs and all associated works at Cloonybeirne Townland, Co. Roscommon.

7.0 Natural Heritage Designations

7.1. The subject site is not located within or directly adjacent to any Natura 2000 sites.

7.2. The following Natura 2000 sites are located within approx. 15km of the site: Lough Ree SAC and SPA, Corbo Bog SAC, Ballinturly Turlough SAC, Lisduff Turlough SAC, Fortwilliam Turlough SAC, Lough Funshinagh SAC, Four Roads Turlough SAC, Lough Croan Turlough SAC and SPA, River Suck Callows SPA and Four Roads Turlough SPA.

7.3. The nearest hydrological feature to the route of the proposed underground connection is the Creevyquin Stream. This stream is connected to Lough Ree SAC and SPA approx. 13 km downstream, via the Jiggy (Hind) River and the Hind River.

8.0 The Referral

8.1. Referrer's Case

8.1.1. The Referrer submits the following:

- The public will not be endangered by reason of traffic hazard or obstruction of road users;
- A detailed traffic management plan will be included with a road opening licence application to Roscommon County Council for future consideration and approval prior to the commencement of any works;
- Traffic management and traffic signage will be in accordance with the requirements of the Department of Transport, in agreement with Roscommon County Council;
- One side of the N63 will remain open to traffic at all times by means of a “stop-go” traffic management system, with the use of temporary traffic signals, appropriate parking of construction vehicles and road sweeping;
- The cable will typically be installed in 100 m sections, and where the construction requires the crossing of the road, works on one carriageway will be completed before the second is opened to maintain traffic flows at peak and non-peak hours;
- A full closure of the L-1811 secondary roadway will be required, apart from local access for residents. The route diversion will be agreed in the road opening licence application in advance of the development, with a detailed traffic management plan to protect public safety and minimise road user obstruction;
- The HDD drilling process under the bridge structure at the Creevyquin Stream, will include a steel box in the launch and reception pits that will contain any drilling fluid returns from the borehole path under the

watercourse. This will be a minimum depth of 1500 mm under the Creevyquin Stream, in accordance with recommended guidelines by Inland Fisheries Ireland and Waterways Ireland to avoid impacts to the watercourse or water contamination;

- A detailed Construction Environmental Management Plan (CEMP) will be prepared prior to the commencement of construction, with best practice drilling techniques and experienced supervision to apply environmental compliance to avoid any drilling risk to the stream;
- All non-recyclable waste or drilling rig fluids arising during the construction phase will be managed and disposed of in a way that ensures the provisions of the Waste Management Act 1996 and associated amendments and regulations are followed;
- The AA screening assessment considers that it is highly unlikely that the proposed works will have an adverse impact on the impairment of water quality of any of the qualifying habitats or species of interest in Lough Ree SAC and SPA;
- Having regard to the distance separating the site from the Natura 2000 sites, and the best practice measures that will be implemented during the construction of the grid connection, it can be concluded that the proposed development will not have any adverse effects on the water quality of Lough Ree SAC and SPA downstream. In addition, there will not be any significant in-combination contribution;
- The development accords with Class 26 of Part 1, Schedule 2 of the Planning and Development Regulations, 2001, and as such, constitutes exempted development.

8.2. Planning Authority Response

8.2.1. None received.

9.0 Statutory Provisions

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

- 9.1.1. **Part 1, Section 2(1)** of the Act states that, “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”.
- 9.1.2. **Part 1, Section 2(1)** of the Act states that a “statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to -
- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,
 - (b) provide, or carry out works for the provision 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.
- 9.1.3. **Part 1, Section 3(1)** of the Act 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”.
- 9.1.4. **Part 1, Section 4(1)** sets out the various forms and circumstances in which development is exempted development for the purposes of the Act.
- 9.1.5. **Part 1, Section 4(2)(a)(i)** states that “the Minister may by regulations, provide for any class of development to be exempted development for the purposes of this Act, where he or she is of the opinion that –
- (i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,”

9.1.6. **Part 1, Section 4(4)** states that “notwithstanding.... any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required”.

9.1.7. **Part XAB, Section 177(U)(9)** states that “in deciding a declaration or 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”.

9.2. **Planning and Development Regulations, 2001 (as amended)**

9.2.1. For the purposes of the Regulations, **Article 3(3)** confirms that electricity undertaking means “an undertaker authorised to provide an electricity service”. There is no statutory definition to provide further clarity in relation to this matter.

9.2.2. **Article 6 (1)** 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.

9.2.3. **Schedule 2, Part 1, Class 26** of the Regulations defines the following as exempted development: “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”. No conditions or limitations are specified in column 2 of this Class.

9.2.4. **Article 9** sets out the following relevant restrictions on exempted development:

(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) If the carrying out of such development would –

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which

class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(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,

(xi) obstruct any public right of way.

10.0 Assessment

10.1. The purpose of this Referral is not to determine the acceptability or otherwise of the construction of an underground 20kV medium voltage cable within the public road in respect of the proper planning and sustainable development of the area, but rather, whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

10.2. Is or is not development

10.3. A question has arisen as to whether the construction of an underground 20 kV medium voltage cable within the public road between the permitted Creevy solar farm and the existing Roscommon ESB 38 kV substation, is or is not, development, and is or is not, exempted development?

10.3.1. As set out in Section 9.0 of this report, “development” means, except where the context otherwise requires, the carrying out of works on, in, over or under land, while “works” includes any act or operation of construction or excavation.

10.3.2. Having regard to the nature of the proposal, comprising the construction of a 1.96km underground cable, I consider it is reasonable to conclude that the proposal constitutes “development” within the meaning of the Act. The focus, therefore, is on whether or not the proposed development constitutes exempted development.

10.4. Is or is not exempted development

10.4.1. I consider that the development would not fall within any of the categories of exemptions set out in Section 4(1) of the Act.

10.4.2. Following on from Section 4(2)(a)(i) of the Act, and the Regulations made thereunder, the relevant class of exempted development in this case is **Class 26** of the Planning and Development Regulations, 2001 (as amended). In considering the provisions of this Class, I am satisfied that the development consists of the layout of an underground cable for the purposes of an electricity service.

10.4.3. I further note that Class 26 requires that such development shall be carried out by “any undertaker authorised to provide an electricity service”. Article 3(3) of the Regulations confirms that electricity undertaking means “an undertaker authorised to provide an electricity service”. There is no statutory definition to clarify what exactly

this means. I note that the **Electricity Regulation Act, 1999** provides the following definition at Section 2(1):

“electricity undertaking” means any person engaged in generation, transmission, distribution or supply of electricity, including any holder of a licence or authorisation under this Act, or any person who has been granted a permit under section 37 of the Principal Act”.

- 10.4.4. I note that while this definition refers to holders of licences/authorisations/permits, the use of the conjunction “including” prior to the reference to these instruments indicates that they are not essential and that the term “electricity undertaking” can apply to “any person” engaged in generation, transmission, distribution or supply of electricity.
- 10.4.5. Class 26 falls under the heading “Development by Statutory Undertakers” within Schedule 2, Part 1 of the Regulations, and is one of several classes in this part of the Schedule (Class 23 – Class 32). As such, I consider that the references to undertakers, undertakings and other bodies/authorities referred to in these classes, must be construed as meaning statutory undertakers.
- 10.4.6. The definition of “Statutory Undertaker” as provided in the Act encompasses a broad spectrum of categories of persons or bodies. It includes “...a person, for the time being, authorised by or under any enactment or instrument under an enactment to ...provide, or carry out works for the provision of ...electricity”. In my opinion, Power Capital Renewable Energy (formerly Gaelectric Renewable Energy Development Ltd.) would appear to fall within this category on foot of their authorisation under the Planning Act to construct a solar farm that is a project/works for the provision of electricity (Roscommon County Council Reg. Ref. PD/17/28; ABP Ref. PL20.248780 refers). I further note that the Referrer intends to apply to the Commission for the Regulation of Utilities (CRU) for a licence/authorisation under Sections 14 and 16 of the Electricity Regulations Act. I am satisfied therefore, that the proposed development falls within the scope of Class 26.
- 10.4.7. The next step is to consider Section 4(4) of the Act which effectively de-exempts any development which attracts a requirement for Environmental Impact assessment (EIA) or Appropriate Assessment (AA).

10.5. EIA Screening

- 10.5.1. The proposed development does not fall within a class of development for the purposes of EIA with reference to Schedule 5 of the Planning and Development Regulations, 2001 (as amended). Having regard to the nature and scale of the proposal, it is considered that it would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.
- 10.5.2. As such, I am satisfied that the provisions of Part 1, Section 4(4) of the Act with respect to EIA do not apply in this case.

10.6. AA Screening

- 10.6.1. The Referral documentation includes an AA screening report, which concludes that a Stage 2 AA is not required in this instance. However, Roscommon County Council considered that there is not sufficient certainty to conclude that significant impacts on European sites can be ruled out, and as such, a Stage 2 AA is required.
- 10.6.2. The subject site is not located within or adjacent to any Natura 2000 sites. As such, there is no potential for direct impacts on any such site. Lough Ree SAC (site code: 000440) and Lough Ree SPA (site code: 004064) are the most relevant European sites for the purposes of this Referral.
- 10.6.3. The proposed development will cross under the Creevyquin Stream at the north-western end of local road L1811. I note that the Creevyquin Stream flows in a south-westerly direction before joining the Jiggy (Hind) River, which in turn flows in a southerly direction before discharging into the Hind River. The Hind River then flows eastwards before discharging into Lough Ree SAC and SPA. As such, there is a potential hydrological connection via the Creevyquin Stream between the proposed grid connection and Lough Ree SAC and SPA, which is located c.13 km downstream. I consider that there is no potential for direct or indirect impacts on the remaining Natura 2000 sites identified in Section 7.0 above, given the separation distances which arise and the absence of impact pathways. As such, I consider that these sites can be screened out from further assessment.

10.6.4. The Conservation Objectives for Lough Ree SPA include:

- (1) To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA including:
Little Grebe (A004); Whooper Swan (A038); Wigeon (A050); Teal (A052); Mallard (A053); Shoveler (A056); Tufted Duck (A061); Common Scoter (A065); Goldeneye (A067); Coot (A125); Golden Plover (A140); Lapwing (A142); and, Common Tern (A193).
- (2) To maintain or restore the favourable conservation condition of the wetland habitat at Lough Ree SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

10.6.5. The Conservation Objectives for Lough Ree SAC include:

- (1) To restore the favourable conservation condition of natural eutrophic lakes with Magnopotamion or Hydrocharition-type vegetation (3150);
- (2) To restore the favourable conservation condition of semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (6210);
- (3) To restore the favourable conservation condition of degraded raised bogs still capable of natural regeneration (7120);
- (4) To maintain the favourable conservation condition of alkaline fens (7230);
- (5) To maintain the favourable conservation condition of limestone pavements (8240);
- (6) To maintain or restore the favourable conservation condition of old sessile oak woods with Ilex and Blechnum in the British Isles (91A0);
- (7) To restore the favourable conservation condition of Bog woodland (91D0);
and,
- (8) To maintain the favourable conservation condition of Otter (1355).

10.6.6. Horizontal Direction Drilling (HDD) of 130 m will be required to install the cable under the Creeyquin Stream, as the bridge structure overhead has insufficient cover to meet ESB standards. As such, there is potential for drilling fluids and sedimentation to run-off into the Creevyquin Stream on foot of these works.

- 10.6.7. The HDD will include the establishment of a works area of 40 m² on either side of the stream crossing. The drilling rig and fluid handling units will be located on one side of the bridge and will be stored on double bunded 0.5mm PVC bunds which will contain any fluid spills and storm-water run-off. Entry and exit pits (1m x 1m x 2m) will be excavated using an excavator, with the excavated material temporarily stored within the works area and used for reinstatement or disposed of to a licensed facility.
- 10.6.8. A 1m x 1m x 2m steel box will be placed in each pit which will contain any drilling fluid returns from the borehole. The driller will push the drill string into the ground and will steer the bore bath under the watercourse. This will be at a minimum depth of 1500 mm under the Creevyquin Stream, in accordance with Inland Fisheries Ireland and Waterways Ireland recommendations to avoid impacts to the watercourse or water contamination. A back-reamer will be fitted in the exit pit and will pull a drill pipe back through the bore to the entry side. A towing assembly will pull the ducting into the bore. The steel boxes will then be removed, with the drilling fluid removed to a licensed facility. The entry and exit pits will be reinstated to the specifications of ESB Networks and Roscommon County Council.
- 10.6.9. In my opinion, the proposed development will not result in any direct or indirect loss or disturbance to any of the Annex I habitats and Annex II species for which Lough Ree SAC is designated or the Annex I bird species for which Lough Ree SPA is designated, given the localised nature of the development and the separation distance which arises to these sites.
- 10.6.10. I further consider that the proposed development would not have any adverse impacts on the water quality of the Creevyquin Stream and that of Lough Ree SAC/SPA downstream. In reaching this conclusion, I note that the HDD construction methodology will ensure there is no potential for contaminants or sedimentation to enter the watercourse. For the avoidance of doubt, I consider that the best practice construction techniques which are described in the Outline Construction Methodology are inherent to the HDD process, and as such, do not constitute mitigation in the context of AA. In considering a worst-case scenario where such impacts may arise, I consider that adequate dilution and dispersion of any such contaminants or sedimentation would occur, given the separation distance of c. 13 km which arises to the Natura 2000 sites.

- 10.6.11. In the event the Board disagrees with my conclusion and considers that the best practice construction techniques constitute mitigation measures in the context of AA, I note that the proposed development may not constitute exempted development with reference to Part 1, Section 4(4) of the Act and Article 9(1)(a)(viiB) of the Regulations.
- 10.6.12. Given the underground nature of the works, their rural location and the likely limited timeframe which will be required to undertake same, I consider that there will not be any significant in-combination effects on foot of the proposed development which could impact on Lough Ree SAC/SPA.
- 10.6.13. I consider, therefore, that it is reasonable to conclude, 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 Lough Ree SAC (site code: 000440) and Lough Ree SPA (site code: 004064), or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required. I am satisfied, therefore, that the proposed development does not fall within the scope of Section 4(4) of the Act.

10.7. Restrictions on exempted development

- 10.7.1. The next step in this assessment is to consider the relevant provision of Article 9(1) of the Regulations to check if any of these 'de-exemptions' apply.
- 10.7.2. **Article 9(1)(a)(iii)** refers to the endangerment of public safety by reason of traffic hazard or obstruction of road users.
- 10.7.3. The issue of traffic management is considered in Section 6.0 of the Referrer's Outline Construction Methodology. I note that all works on public roads will be subject to the approval of a road opening licence application, which will include the preparation of a detailed traffic management plan. In the absence of this plan, Roscommon County Council's Planning Officer considered that the possibility of the proposed development endangering public safety by reason of traffic hazard or obstruction of road users could not be ruled out.
- 10.7.4. Given that a road opening licence will be required to implement the development in agreement with Roscommon County Council and that the development relates to an underground cable, in my opinion, the proposed development would not endanger

public safety by reason of traffic hazard or obstruction of road users. As such, I consider that the provisions of this Article do not apply in this instance.

10.7.5. In relation to **Article 9(1)(a)(v)**, I have already concluded that the development falls within the scope of Class 26 of the Regulations, and as such, this Article does not apply.

10.7.6. **Articles 9(1)(a)(vii) and (viiA)** refer to archaeological and other sites of interest that are the subject of preservation/conservation objectives. Given that the development is proposed within existing public roads, I am satisfied that the development does not fall within the scope of these Articles. In reaching this conclusion, I note that a ringfort (RO040-024) adjoins the western boundary of the existing 38kV substation and that a large enclosure (RO040-027) adjoins the western boundary of the permitted solar farm. However, I further note that the proposed development is located within the public road outside of these national monument sites, and where works have already been undertaken for the purposes of delivering the road.

10.7.7. **Article 9(1)(a)(viiB)** refers to the issue of Appropriate Assessment and as such my conclusion reached at paragraph 10.6.13 above applies.

10.7.8. **Article 9(1)(a)(xi)** refers to the obstruction of any public right of way. Given that the proposed development comprises an underground cable, and that the works to implement same will be temporary and short-term in nature, I am satisfied that this Article does not apply.

10.8. **Precedent Referral Cases**

RL3436

10.8.1. The laying of underground 20kV electricity cables and ancillary works to link Turraheen Windfarm (Planning Ref. 13/24) to Glencarbry Windfarm (Planning Ref. 07/255) is development and is exempted development.

RL 3375

10.8.2. The laying of 220 m of 20kV underground cable forming part of the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Kilnalun, County Meath is development and is exempted development.

10.9. Conclusion

10.9.1. In my opinion, the proposed laying of the underground cable constitutes “works” and therefore constitutes “development” within the meaning of the Act. I further consider that the proposed development would constitute exempted development under Class 26 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended).

11.0 Recommendation

11.1. I recommend that the Board issue an order as follows:

11.2. **WHEREAS** a question has arisen as to whether the construction of an underground 20 kV medium voltage cable within the public road between a permitted solar farm and a 38 kV substation, is or is not, development, and is or is not, exempted development:

AND WHEREAS Power Capital Renewable Energy Ltd. requested a declaration on this question from Roscommon County Council and the Council issued a declaration on the 4th day of June, 2020 stating that:

(1) the proposed development constitutes development as defined in the Planning and Development Act 2000 (as amended) and associated Regulations;

(2) the likelihood of significant effects from the proposed development on the conservation objectives of European sites, in particular Lough Ree SAC and Lough Ree SPA cannot be excluded, and a Stage 2 AA is required, therefore, in accordance with Section 4(4) of the Planning and Development Act, 2000, as amended, the said works cannot avail of any exemptions that might otherwise be available under the Act, or under the Planning and Development Regulations, 2001, as amended;

(3) the possibility of the proposed development endangering public safety by reason of traffic hazard or obstruction of road users cannot be ruled out and therefore the said works cannot avail of any exemptions that might otherwise be available under Section 9 of the Planning and Development Regulations, 2001, as amended; and,

(4) the proposed development is not exempted development as defined in the Planning and Development Act 2000 (as amended) and associated Regulations

AND WHEREAS Power Capital Renewable Energy Ltd referred this declaration for review to An Bord Pleanála on 16th day of July, 2020:

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

- (a) Sections 2(1), 3(1), 4(1), 4(2)(ai), 4(4) of Part 1 and Section 177 (U)(9) of Part XAB of the Planning and Development Act, 2000, as amended,
- (b) Articles 3(3), 6(1), 9(1) (a) (iii), (v), (vii), (viiA), (viiB) and (xi) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 26 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (d) The documentation on file and the report of the Planning Inspector

AND WHEREAS An Bord Pleanála has concluded that –

- (a) the said underground cable comes within the scope of Sections 2(1) and 3(1) of the Act, as amended, and constitutes development,
- (b) the said underground cable comes within the scope of Class 26, Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended,
- (c) the said underground cable does not come within the scope of Section 4(4) of the Planning and Development Act, 2000, as amended. In this regard the Board adopts the report of the Inspector in relation to EIA and AA and, thereby, has carried out the necessary assessments to conclude that neither EIA nor AA is required, and
- (d) the said underground cable does not come within the scope of Articles 9(1) (a)(iii), (v), (vii), (viiA), (viiB) and (xi) of the Planning and Development Regulations, 2001, as amended,

11.3. **NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3) of the 2000 Act, hereby decides that the construction of an underground 20 kV medium voltage cable within the public road between a permitted solar farm and a 38 kV substation, is development and is exempted development.

Louise Treacy
Planning Inspector

19th January 2021