



An  
Bord  
Pleanála

## Inspector's Supplementary Report ABP-310086-21

### Question

Whether the provision of an underground electricity cable, grid connections, and associated works from the Ballynahulla 220 kV sub-station to Gneeves 38 kV sub-station (Gneeves Wind Farm in County Cork), along the Local Tureencahill to Rathmore Road (L7057), joining the R582, and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, is or is not development, and is or is not exempted development?

### Location

Ballynahulla 220 kV sub-station to Rathmore along the L7057 and Rathmore to the bridge crossing of the Awnaskirtaun River along the R582, Co. Kerry.

**Declaration**

Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	EX910
Applicant for Declaration	Patrick Cremins
Planning Authority Decision	-

**Referral**

<b>Referred by</b>	Kerry County Council
<b>Owner/ Occupier</b>	-
<b>Observer(s)</b>	Brookfield Renewable Ireland Ltd
<b>Date of Site Inspection</b>	12 <sup>th</sup> August 2021
<b>Inspector</b>	Hugh D. Morrison

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## 1.0 Introduction

- 1.1. The Board considered this referral on 13<sup>th</sup> May 2022. It noted my original report and it decided to defer making a decision to allow time for a supplementary report to be prepared. In doing so the Board advises me that it may consider that there is a valid question before it and so an assessment of the substantive issues set out in the referred question is requested.

## 2.0 Summary of Planning Applications

- 2.1. For ease of reference, I have summarised below the planning applications that I refer to in the remainder of this report.

- 03/6549: Proposed 38 kV line from Gneeves Wind Farm in County Cork to the Rathmore 38 kV Sub-Station in the townland of Nohavaldaly in County Cork: Permitted at appeal PL04.206497 on 21<sup>st</sup> July 2004.
- 13/5717: Proposed extension of Gneeves Wind Farm in County Cork comprising 3 no. wind turbines and accompanying works, including an extension to the existing sub-station: (This application was the subject of an EIS and a NIS): Ten-year permission granted on 3<sup>rd</sup> September 2014.

While the former permission has been implemented, I am unable to confirm that the latter one has been.

- 2.2. (From information available on the web, I have been able to ascertain that the Gneeves Wind Farm has 11 wind turbines with a capacity of 9.35 MW, and it adjoins two other wind farms, i.e., Curragh Wind farm, which has 8 wind turbines and a capacity of 18.4 MW, and Coomacheo Wind Farm, which has 18 wind turbines and a capacity of 41.4 MW).
- 2.3. The questioner cites recent permissions which have been granted by Kerry County Council/An Bord Pleanala for Ballynahulla 220 kV sub-station, i.e., under 18/339, a battery storage compound, and under 18/964 (and PL08.303329) and 20/689, works to extend the sub-station.

### 3.0 The Question

3.1. The question, as asked by the questioner, states the following:

Whether the provision of an underground electricity cable, grid connections, and associated works from the Ballynahulla 220 kV sub-station to Gneeves 38 kV sub-station (Gneeves Wind Farm in County Cork), along the Local Tureencahill to Rathmore Road (L7057), joining the R582, and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, is or is not development, and is or is not exempted development?

3.2. The questioner's submission includes maps of the route of the underground electricity cable between Ballynahulla 220 kV sub-station and the bridge over the Awnaskirtaun River, which forms the County boundary between Kerry and Cork. The Gneeves Wind Farm and accompanying 38 kV sub-station is identified as lying to the south-east at a considerable remove from the County boundary, i.e., to the south-west of Millstreet. No indication is given of the route that the underground electricity cable may follow within County Cork and no reference is made to any parallel request for a Section 5 declaration from Cork County Council for such a cable.

3.3. The submission from the questioner, therefore, does not illustrate the entire route of the underground electricity cable and yet he states unequivocally that the underground electricity cable in question does run between Ballynahulla 220 kV sub-station and the Gneeves Wind farm.

3.4. By contrast, the operator of the Gneeves Wind Farm, Brookfield Renewable Ireland Ltd, states unequivocally that its wind farm is connected via an on-site 38 kV sub-station to the Rathmore 38 kV sub-station and so it is not connected to the Ballynahulla 220 kV sub-station as the questioner states. The operator draws attention to the overhead line that functions in this respect and which was granted permission under 03/6549 and PL04.206497.

3.5. The questioner draws attention to a latter permission for the extension of the Gneeves Wind Farm (13/5717). The EIS submitted as part of this application referred to a grid connection by means of an overhead line between the on-site 38 kV sub-station and the Knockearagh 110 kV sub-station to the north-east of

Killarney. Condition No. 2 attached to the permission refers explicitly to the measures set out in this EIS. The scope of “measures” is unqualified, although within the context of the entire Condition this may be a reference to mitigation measures. From the information before me, I am unclear as to whether this permission has been implemented or not.

- 3.6. To return to the disagreement between the questioner and the operator over the Gneevs Wind Farm grid connection, the Board circulated the operator’s letter dated 7<sup>th</sup> May 2021 to interested parties, including the questioner for comment. The questioner responded by reiterating his understanding of the grid connection at issue but without providing any supporting evidence for his position. In these circumstances, I consider that I am not in a position to accept *prime facie* the questioner’s understanding of the grid connection and so the question needs to be restated accordingly to read as follows:

Whether the provision of an underground electricity cable and associated works from the Ballynahulla 220 kV sub-station, along the Local Tureencahill to Rathmore Road (L7057), joining the R582, and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, is or is not development, and is or is not exempted development?

- 3.7. The restated question refers to neither the ultimate destination of the underground electricity cable nor its purpose. Consequently, those aspects of the questioner’s case that rely on an unsubstantiated understanding of these matters no longer arise. Accordingly, his contentions that the underground electricity cable is de-exempted by virtue of Article 9(1)(a)(i) and 9(1)(c) of the Regulations no longer arise.

- The first of these Items refers to the alleged breach of Conditions Nos. 1 and 2 attached to the permission granted to 13/5717, which the questioner contends would arise if the Gneevs Wind Farm were to be the subject of a grid connection other than the one envisaged in the EIS, i.e., to Knockearagh 110 kV sub-station.
- The second of these Items refers to the alleged need to include any grid connection within the ambit of EIA for the Gneevs Wind Farm.

- 3.8. Potentially, Article 9(1)(c) could arise were the underground electricity cable to be a project, in its own right, that is subject to EIA. However, underground electricity cables are not a class for the purposes of EIA and so the need or otherwise for EIA does not, therefore, arise.
- 3.9. I will consider the questioners remaining contention that the underground electricity cable is de-exempted by virtue of Article 9(1)(a)(viiB) under my assessment below. In doing so I will assume that this legislative provision, which came into force in an amendment to the Regulations that occurred in 2013, was applicable when the cable in question was laid. Neither the questioner nor the referrer have provided any information in this respect. I observed evidence of the presence of this cable during my site visit in August 2021 and evidence of its presence on Google Maps exists from July 2019. But that is the extent of the evidence before me.

#### **4.0 Is or is not development**

- 4.1. The laying of the underground electricity cable in question would have entailed acts or operations of excavation and construction and so it comes within the definition of “works” in Section 2(1) of the Planning and Development Act, 2000 – 2021, (hereafter referred to as the Act).
- 4.2. Under Section 3(1) of the Act, “development” is defined as “the carrying out of any works on, in, over or under land” and so the laying of the underground electricity cable in question comes within this definition, i.e., it is development.

#### **5.0 Is or is not exempted development**

- 5.1. The questioner states that the laying of the underground electricity cable was undertaken either by ESB Networks or under the supervision of ESB Networks. During my site visit, I observed that manholes and warning plaques bearing the imprint of either the ESB or ESB Networks were in-situ along the route of the underground electricity cable. These observations corroborate the questioner’s statement.
- 5.2. Under Article 6(1) of the Planning and Development Regulations, 2001 – 2021, (hereafter referred to as the Regulations) reference is made to the classes of

development in Part 1 of Schedule 2 of the Regulations which are exempted development for the purposes of the Act. One of these classes, Class 26, refers to statutory undertakers and it states that “The carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of...cables...for the purposes of the undertaking.”

- 5.3. Section 2(1) of the Act defines “statutory undertaker” as “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 provision of, gas, electricity or telecommunications services...” This definition encompasses the ESB and other bodies involved in the provision of electricity, e.g. those operating under the supervision of the ESB.
- 5.4. In the light of Section 2(1) of the Act, Class 26, which is unqualified by any conditions or limitations, is applicable to the laying of underground electricity cables in question. This development is therefore exempted development.

## 6.0 Restrictions on exempted development

- 6.1. Article 6(1) is subject to Article 9(1) of the Regulations, which sets out restrictions on exempted development, which if applicable, effectively de-exempt such development. Under the restated question, one of these restrictions needs to be considered, i.e. the restriction set out under Article 9(1)(a)(viiB), which I will address below. (For the sake of completeness, I have considered the other restrictions under Article 9(1)(a), and under Article 9(1)(b), (c), and (d) and I conclude that they do not restrict this exempted development).
- 6.2. The relevant extract from Article 9(1) is set out below for ease of reference:

*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 –*

*(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,*



- 6.3. The route of the underground electricity cable runs to the west of the River Blackwater (Cork/ Waterford) SAC (002170). This route initially runs cross-country along a forest track to the L7057 from Ballynahulla 220 kV sub-station. In doing so it crosses the Yellow River, which flows south-east into the River Blackwater. The route then runs along the line of the L7057 to Rathmore. In doing so it crosses over five streams, which flow eastwards to the River Blackwater. Two of these streams are named, i.e., Toorrencahill Stream and Cullavaw Stream. That portion of the former Stream to the east of the L7057 is included in the SAC and the latter Stream, too, is included in the SAC. Another unnamed stream to the south of the Toorrencahill Stream is likewise included in the SAC over its portion to the east of the L7057. The route terminates at the bridge on the R582, which crosses the Awnaskirtaun River. This River is included within the SAC. Accordingly, this route abuts and crosses watercourses that either flow into the River Blackwater SAC or are comprised within it.
- 6.4. The route of the underground electricity cable runs to the south of the Stack's to Mullaghareik Mountains, West Limerick Hills and Mount Eagle SPA (004161).
- 6.5. Under Article 9(1)(a)(viiB), the Board is required to determine whether the laying of the underground electricity cable would have been likely to have had a significant effect on the two European sites identified, i.e. the test for appropriate assessment. I consider that, in relation to the River Blackwater SAC, the watercourses identified above mean that source/pathway/receptor routes would have existed between the linear site of the project and this SAC and so the need to consider whether the project would have had a significant effect on it arises. I also consider that the proximity of the site to the Stack's to Mullaghareik Mountains, West Limerick Hills and Mount Eagle SPA is such that the need to consider whether the project would have had a significant effect on this SPA arises. I will, therefore, undertake a Stage 1 Screening on each of these sites.
- 6.6. The question to be considered under Stage 1 Screening is whether the project would have been likely to have had a significant effect either individually or in combination with other plans and projects on a European Site(s).
- 6.7. The subject project entailed the laying of an underground electricity cable from the Ballynahulla 220 kV sub-station to the bridge on the R582 over the Awnaskirtaun

River. This cable was laid initially under a forest track and then consecutively under the L7057 and R582. From my site visit, it is apparent that a trench methodology was employed in the laying of the cable.

6.8. As discussed above, two European Sites might have been affected by the project, i.e., the River Blackwater (Cork/ Waterford) SAC (002170) and the Stack's to Mullaghareik Mountains, West Limerick Hills and Mount Eagle SPA (004161).

6.9. The Qualifying Interests of the SAC are as follows:

*1029 Freshwater Pearl Mussel Margaritifera margaritifera*

*1092 White-clawed Crayfish Austropotamobius pallipes*

*1095 Sea Lamprey Petromyzon marinus*

*1096 Brook Lamprey Lampetra planeri*

*1099 River Lamprey Lampetra fluviatilis*

*1103 Twaite Shad Alosa fallax*

*1106 Atlantic Salmon Salmo salar (only in fresh water)*

*1130 Estuaries*

*1140 Mudflats and sandflats not covered by seawater at low tide*

*1220 Perennial vegetation of stony banks*

*1310 Salicornia and other annuals colonizing mud and sand*

*1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae)*

*1355 Otter Lutra lutra*

*1410 Mediterranean salt meadows (Juncetalia maritimi)*

*1421 Killarney Fern Trichomanes speciosum*<sup>3260</sup> *Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation*

*91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles*

*91E0 \*Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)*

*91J0 \*Taxus baccata woods of the British Isles*

6.10. The Conservation Objectives for these Qualifying Interests are as follows:

- To restore the favourable conservation condition of the following Qualifying Interests: 1029, 1095, 1103, 1330, 1355, 91A0 & 91E0,
- To maintain the favourable conservation condition of the following Qualifying Interests: 1012, 1096, 1099, 1106, 1130, 1140, 1220, 1310, 1410, 1421 & 3260, and
- In the case of Qualifying Interest 91J0, its Conservation Objective has yet to be determined.

6.11. The Stack's to Mullaghareik Mountains, West Limerick Hills and Mount Eagle SPA (004161). The Qualifying Interest of the SPA is the Hen Harrier *Circus cyaneus* [A082]. The Conservation Objective for this Qualifying Interest is to maintain or restore its favourable conservation condition.

6.12. Insofar as the laying of the underground electricity cable could have led to pollutants being conveyed into watercourses that are either part of the SAC or flow into the SAC, qualifying interests susceptible to changes in water quality could have been affected. Of the qualifying interests cited above, the Freshwater Pearl Mussel is particularly sensitive to such changes.

6.13. In my view, it can reasonably be assumed that best practice construction methodologies were employed to minimise the risk of pollutants being conveyed into watercourses, then any risk posed would have been slight. Such methodologies would have been employed regardless of the presence of the SAC in order simply to protect water quality. In my view, it can also reasonably be assumed that the laying of the underground electricity cable was undertaken progressively with short lengths of trench being opened and closed at any one time, then any risk posed would have been slight. And so, overall, the risk posed would have been slight and of temporary duration.

6.14. Insofar as the laying of the underground electricity cable would have generated environmental effects such as noise, fumes, and general disturbance, it could potentially have disturbed Hen harriers. However, as the vast majority of the linear site coincides with existing public roads, these environmental effects would have been comparable with those arising from the vehicular traffic that normally uses these roads. The remaining stretch of the linear site coincides with an existing forest track, the occasional use of which by forestry vehicles would have similar

environmental effects to those generated by plant and machinery used to lay the underground electricity cable. The environmental effects would have been slight and of temporary duration.

6.15. I am not aware of other plans and projects which could have in combination with the project in question have given rise to likely significant effects.

6.16. The development was considered in light of the requirements of Section 177U of the Planning and Development Act, 2000 – 2022. Having carried out Screening for Appropriate Assessment, it has been concluded that the development individually or in combination with other plans or projects would not have been likely to have had a significant effect on European Sites Nos. 002170 and 004161, or any other European Site, in view of the Sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) would not therefore have been required.

This determination of based on the following:

- The minor nature of the construction works,
- The temporary duration of the construction works, and
- The similarity of any environmental effects to those arising from vehicular traffic that uses the L7107, R582, and the forestry track.

6.17. In making this screening determination no account has been taken of any measures intended to avoid or reduce potentially harmful effects of the project on a European Site.

6.18. In the light of my screening determination, I conclude that the exempted development status of the laying of the underground electricity cable in question is not restricted by Article 9(1)(a)(viiB) of the Regulations.

## 7.0 Recommendation

7.1. 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 provision of an underground electricity cable, grid connections, and associated works from

the Ballynahulla 220 kV sub-station to Gneeves 38 kV sub-station (Gneeves Wind Farm in County Cork), along the Local Tureencahill to Rathmore Road (L7057), joining the R582, and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, is or is not development, and is or is not exempted development:

**AND WHEREAS** the restated question is whether the provision of an underground electricity cable and associated works from the Ballynahulla 220 kV sub-station, along the Local Tureencahill to Rathmore Road (L7057), joining the R582, and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, is or is not development or is or is not exempted development:

**AND WHEREAS** Patrick Cremins requested a declaration on this question from Kerry County Council and the Council did not issue a declaration within the statutory period:

**AND WHEREAS** Kerry County Council referred this question for review to An Bord Pleanála on the 27<sup>th</sup> day of April, 2021:

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

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

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The laying of the underground electricity cable entailed works and so it is development under Section 3(1) of the Planning and Development Act, 2000, as amended.
- (b) The laying of the underground electricity cable by a statutory undertaker is exempted development under Class 26 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.
- (c) The laying of the underground electricity cable is exempted development that is not restricted by Article 9(1) of the Planning and Development Regulations, 2001, as amended.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the provision of an underground electricity cable and associated works from the Ballynahulla 220 kV sub-station, along the Local Tureencahill to Rathmore Road (L7057), joining the R582, and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, is development and is exempted development.

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Hugh D. Morrison  
Planning Inspector

10<sup>th</sup> August 2022