

# Inspector's Report

## ABP-310934-21

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<b>Development</b>	Completion of partially constructed overhead electricity line from Thurles electricity substation to the Borrisoleigh electricity substation as permitted under TCC Reg 08/511136.
<b>Location</b>	Ballygammane, Lisduff, Knockanacunna, Cassestown, Farranreigh, Tooreen, Rossestown, Brittas, Clonamuckoge More, Clonamuckoge Beg, Kilkillahara, Ballybristy, Lisheenataggart, Rorardstown Lower, Rorardstown Upper, Rathleasty, Kivilcorris, Clonbrassil,
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	21638
<b>Applicant(s)</b>	ESB
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission subject to conditions

<b>Type of Appeal</b>	First Party Appeal under s.48.
<b>Appellant(s)</b>	ESB
<b>Observer(s)</b>	none
<b>Date of Site Inspection</b>	12 <sup>th</sup> October, 2021
<b>Inspector</b>	Stephen Kay

## 1.0 Site Location and Description

- 1.1. The site of the proposed development comprises a 38kv overhead electricity line connecting the Borrisoleigh substation that is sited to the north of the village and running south eastwards to connect to the Thurles substation that is located c.4km to the north east of Thurles.
- 1.2. Permission for the line was granted under Tipperary County Council Ref. 08/511136 however development permitted under this permission was only partially completed. This permission has expired.
- 1.3. The line as existing therefore comprises a number of elements as follows:
- Sections of line where the support structures have been erected and lines strung (shown as black line and block dots / supports as indicated on the Line Route Map submitted – Drg. No. PE687-D473-007-001-000)
  - Sections where the support structures have been installed and no lines strung (shown as red line and block dots / supports as indicated on the Line Route Map submitted – Drg. No. PE687-D473-007-001-000), and
  - Sections where no support structures have been erected (shown as red line and red dots / supports as indicated on the Line Route Map submitted – Drg. No. PE687-D473-007-001-000).
- 1.4. The stated length of the route is 15.24km as per the appeal (public notices state 15.3km) and the following breakdown is provided in the application and appeal submissions on file:

	<b>Line Length (km)</b>	<b>Number of Structures (Nos.)</b>
<b>Permitted Development under Ref. 08/511136</b>	15.24 km	116
<b>Constructed</b>	8.3 km	78
<b>Proposed</b>	6.94 km	38
<b>Totals</b>	15.24 km	116

- 1.5. Approximately 8.3km of the overall route is fully constructed and no further works to these sections are proposed. The balance of the route comprising c.6.94 km require either new poles to be erected or that existing poles would be strung. A breakdown between the sections that require the erection of structures and stringing or just stringing is not provided however, based on the Line Route Map submitted, I estimate that c. 2.5km out of the 6.94km not completed sections referenced above are sections where support structures have been erected but the lines not strung.
- 1.6. The line crosses a number of local roads, the N62 national secondary, the River Suir and also the Dublin to Cork railway line.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the completion of a partially completed 15.3km long 38KV overhead electricity line from Thurles sub station to Borrisoleigh substation.
- 2.2. The permission now sought is for the completion of the unfinished elements to the previously permitted development and comprises works to 38 no. structures, the stringing of conductor along approximately 6.94 km of the line and ancillary works.
- 2.3. The structures to be erected comprise either twin or predominately single timber pole structures strung or to be strung with a twin line.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a Notification of Decision to 4 no. conditions.

- Condition No.1 requires that the development be undertaken in accordance with the drawings and documentation submitted including the construction methodology.
- Condition No.2 requires that the final design of the new poles shall be submitted for the written agreement of the planning authority.

- Condition No.3 requires that the development shall not be undertaken such that noise or dust impair amenities or the environment beyond the site boundary, spread material from the site on the public road or that construction and demolition activity that would give rise to noise that would be audible at the nearest habitable dwelling would be restricted to 08.00 to 18.00 Monday to Friday and 08.00 to 14.00 on Saturdays.
- ***Condition No.4 requires the payment of a development contribution of €133,696 in accordance with the adopted development contribution scheme.***

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The report of the planning officer notes the nature of the proposed development and planning history. No internal reports are noted as being received. While being acknowledged as being visible in the landscape, the visual impact is not considered such as to be excessive. The form of development proposed is not considered to be of a class for the purposes of EIA and the screening assessment undertaken indicates that the proposed development is not likely to have significant effects on any European site having regard to their conservation objectives.

Under the heading of 'Development Contributions', the report includes a table which notes Class 19 (distribution lines) at a rate of €10 per linear metre and applies this to the length of the entire line which is 15,30 metres. The resulting figure (€153,000) is reduced by €19,304) which is the amount of contribution levied and stated to have been paid under Ref. 08/511136 resulting in a net figure of €133,696.

### 3.2.2. Other Technical Reports

None on file.

### 3.3. Prescribed Bodies

Irish Aviation Authority – No objection.

Irish Rail – Notes the requirement for licencing where the line passes railway bridges and also across Iarnroid Eireann lands.

### 3.4. Third Party Observations

None received.

## 4.0 Planning History

Tipperary North County Council Ref. 08/511136 – Permission granted for an overhead 38kv line running from the Thurles 110kv sub station to the Borrisoleigh 38kv sub station, a distance of c.15.3km. Permission was granted subject to 4 no. conditions of which No.4 required the payment of a development contribution of €19,304. The basis of the calculation of this contribution was on a length of 15,200 metres at a rate of €1.27 per metre which was the rate for recreational and community facilities. No contribution was sought under the headings of public water supply, waste water, roads, or parking.

Tipperary North County Council Ref. 14/510074 – Extension of duration of the above permission granted on the basis that the line as permitted under Ref. 08/511136 was approximately 80 percent completed.

## 5.0 Policy Context

### 5.1. Development Plan

The alignment of the proposed development is located in a rural area that is outside of any settlement with the exception of the Borrisoleigh end of the route where the line extends c.300 metres into the settlement boundary.

Section 8.5 of the North Tipperary County Development Plan makes reference to the Grid 25 strategy and notes that the appropriate expansion of the Irish grid is important for economic growth and renewable energy. Stated that the council will facilitate the sustainable and appropriate development of additional electricity generating capacity throughout the region / county and support the sustainable expansion of the network.

**Policy SERV 28** relates to electricity supply lines and states that proposals for overground lines should have regard to the impact on heritage items / locations, European sites, and minimisation of the impact on scenic landscapes.

## 5.2. Tipperary County Council Development Contribution Scheme 2020

Scheme applicable from 1<sup>st</sup> January, 2020.

Section 6.0 sets out the classes of development. Class 19 states as follows:

*'The provision of overhead and/or underground distribution lines for the distribution of electricity and/or telecommunications inclusive of transmission lines to grid connection.'*

Section 10.0 relates to Exemptions and Reductions. Under the heading of Energy Development there are a number of development types where reductions on the base levy will apply. Examples include wind energy, hydro, solar and biomass. There is no specific reference under this heading to electricity lines.

Under Section 11.0 Point to Note it is stated that:

*'This Development Contribution Scheme does not provide for any rebate or refund. The Scheme aims to avoid any double charging of contributions and so an allowance will be made in respect of pre existing authorised development in place prior to the introduction of Development Contributions.'*

In Section 12.0 Schedule of Contributions the applicable rate for Class 19 is as follows:

*Per metre - Distribution lines                      €10*

### 5.3. Natural Heritage Designations

The site is not located within / traversing or close to any European sites. The closest such sites to the appeal site are as follows:

- Lower River Suir SAC (site code 002137) which terminates c.2.5km to the south of Thurles and c.5.5km from the line of the proposed development at the closest point. .

### 5.4. EIA Screening

The form of development proposed is not considered to be of a class for the purposes of EIA having regard to the use classes as set out in the Fifth Schedule of the *Planning and Development Regulations, 2001* (as amended).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The following is a summary of the main issues raised in the grounds of appeal:

- The appeal relates to condition No.4 attached to the Notification of Decision to Grant Permission and is therefore an appeal against financial contributions under s.48(10) of the Planning and Development Act, 2000 (as amended).
- That the provision of the proposed 38kv line represents infrastructure that is necessary for the safe and efficient operation of the electricity system and for the delivery of the objectives of the development plan. In this regard it is noted that the reason for the condition makes reference to '*...in respect of infrastructure and facilities benefitting development....*'.
- Submitted that it is difficult to understand what public infrastructure and facilities provided by Tipperary County Council will benefit the overhead line and it is therefore requested that the condition would be omitted in its entirety on this basis.



- Notwithstanding this, the description of development makes it clear that the development relates to completion of a previously permitted development and that there are sections of the line that have not yet been completed. The cover letter submitted with the application and Drg. No. PE687-D473-003-001-001 clearly set out the nature of the proposed development and the extent of the line that is uncomplete and to which the current application relates.
- Approximately 8.3km of the overall route is fully constructed and no further works to these sections is proposed. The balance of the route comprising c.6.94 km require either new poles to be erected or that existing poles would be strung.
- That a development contribution can only be applied to development that is proposed and not to that which has been constructed on foot of a previous permission and for which a development contribution has previously been paid.
- Noted that the Tipperary County Council development Contribution Scheme includes the following class:  
Class 19 Per metre – Distribution lines €10.
- Therefore, submitted that the council have incorrectly applied the above class and that, if applicable at all, it should only apply to the proposed 6.94km of the line and not to the c.8.3km of line which are complete and where no development is proposed.
- Submitted that the correct contribution to be levied is €50,096 (6,940 metres by €10 per metre (class 19) which equals €69,400 minus €19,304 already paid.

## 6.2. Planning Authority Response

Response received stating that the applicant are arranging to pay the development contributions and that following confirmation of same a final grant of permission will issue.

## 7.0 Assessment

### *Introduction*

- 7.1. The appeal relates to condition No.4 attached to the Notification of Decision to Grant Permission and is therefore an appeal against financial contributions under s.48(10) of the Planning and Development Act, 2000 (as amended).
- 7.2. The relevant development contribution scheme for the assessment of the subject appeal is the *Tipperary County Council Development Contribution Scheme, 2020* which came into effect on a1st January, 2020. A copy of the relevant scheme is attached with this report.

### *Omission of the Condition*

- 7.3. The first issue raised by the first party is that the financial contribution specified in Condition No. 4 of the Notification of Decision to Grant Permission should be removed in its entirety on the basis that the reason cited for the condition makes reference to '*...infrastructure and facilities benefitting development....*'. It is submitted by the first party that it is difficult to understand what public infrastructure and facilities provided by Tipperary County Council will benefit the overhead line and it is therefore requested that the condition would be omitted in its entirety on this basis.
- 7.4. The case made by the first party in this regard is noted and it would indeed appear that that the extent of public infrastructure and facilities benefitting the development provided by Tipperary County Council and funded under the adopted contribution scheme would likely be limited. Notwithstanding this, s.48(10)(b) of the act provides for an appeal to be brought where an applicant '*..considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority*'. The scope of the determination of such appeals by the Board is therefore strictly limited to the application of the scheme.
- 7.5. In the circumstances of the current case, while an argument could perhaps be made that overhead electricity lines should not attract any or a reduced financial contribution, the provisions of the scheme are in my opinion clear with regard to the form of development proposed. Specifically, Section 6.0 of the scheme identifies a class of development relating to the provision of overhead and / or underground

distribution lines and I consider that the form of development proposed comprising a 38kv line comes within the scope of this class of development. Section 10.0 relates to Exemptions and Reductions. While there are a number of development types related to energy cited where reductions on the base levy will apply these do not include electricity lines. None of the other limitations and exemptions cited in Section 10.0 of the adopted scheme are in my opinion applicable to the form of development proposed. Finally, Section 12.0 of the scheme is clear in specifying a rate of €10 per linear metres of distribution line that would apply. In my opinion therefore, the correct application of the terms of the scheme is that a rate of €10 per linear metre of development should apply to the proposed development.

### ***Allowance for Completed Development***

- 7.6. The next issue raised by the appellant is that there should be allowance made for the fact that the current application relates to the completion of the originally permitted development and does not therefore relate to the full 15.24km extent of the originally permitted route under ref. 08/511136.
- 7.7. Condition No.4 attached to the Notification of decision to Grant Permission requires the payment of a development contribution of €133,696 in accordance with the adopted development contribution scheme. As per the report of the Planning Officer on the file, the basis of this calculation would appear to be that the rate of €10 per linear metre has been applied to the entire length of the line which is taken by the Planning Authority to be 15,300 metres. The resulting figure (€153,000) is reduced by €19,304) which is the amount of contribution levied and stated to have been paid under Ref. 08/511136 resulting in a net figure of €133,696. The first party appellants contend that this is an incorrect approach, and that regard should be had to the fact that the application is for the completion of unfinished sections of a previously permitted development and that levies should only be applied to the unfinished sections and not to that part of the development which was constructed on foot of permission Ref. 08/511136.

- 7.8. I would agree with the first party on this issue and note that under the heading of *Point to Note* Section 11.0 of the adopted development contribution scheme states that '*The Scheme aims to avoid any double charging of contributions and so an allowance will be made in respect of pre existing authorised development in place prior to the introduction of Development Contributions.*'
- 7.9. The wording of the scheme is in my opinion clear in that there should not be any double charging and the first party has already paid a contribution to the Planning Authority under Ref. 08/511136 in respect of the full length of the line. It is not in my opinion appropriate or in accordance with the terms of the adopted scheme that the first party would be required to pay again for the sections of the line which were completed under Ref. 08/511136 and to do so would constitute double charging. In addition, as highlighted by the first party appeal, the nature and scope of the current application and the fact that it only relates to the completion of unfinished / incomplete sections of the originally permitted line is clear from the public notices and other application documentation submitted.
- 7.10. Having regard to the above I agree with the first party that the contribution to be paid in accordance with the terms of the adopted scheme should be based on the extent of the uncompleted sections of the line and therefore on a length of 6,940 metres. In my opinion the applicable contribution should therefore be based on 6,940 metres at a rate of €10 per linear metre for distribution electricity infrastructure (as per class 19 of Section 12.0 of the adopted scheme giving a contribution amount of €69,400.

***Allowance for Contributions Previously Paid (€19,304 under Ref. 08/511136)***

- 7.11. The final issue for consideration is how the amount of €19,304 paid by the first party in respect of the proposed development in accordance with conditions attached to Ref. 08/511136 should be accounted for in the calculation. It should be noted that this figure of €19,304 appears to have been calculated on the basis of an overall line length of 15,200 metres (15,200 by €1.27 = €19,304) when the actual total length of the line would appear from the information on file to be 15,240 metres. Given that this amount is not the subject of the current appeal and relates to Ref. 08/511136 it is not proposed to pursue this issue further.

- 7.12. In the first party appeal submission, the approach taken is that the full amount of €19,304 should be subtracted from the contribution calculated on the basis of the extent of new development. The calculation presented by the first party is therefore €69,400 less €19,304 giving a net contribution amount of €50,096.
- 7.13. While I agree that there should be an allowance made for the contributions already paid by the first party under Ref. 08/511136 (€19,304), I consider that the approach proposed by the first party is flawed in that it takes the amount paid in accordance with Ref. 08/511136 which relates to the full extent of the line (15.24km) and applies or sets it off against the part of the line which is undeveloped and is the subject of the current application. In my opinion the correct approach is that the €19,304 previously paid by the first party would be apportioned between the permitted and completed part of the development and that part which remains incomplete, and which comprises the current application the subject of appeal. In my opinion it is only this latter portion which should be set off against the calculation presented above as it is only this part of the contribution already paid which relates to the part of the line that is incomplete and for which permission is now sought. Based on the above the €19,304 equated to 1.2666 per metre of development (based on a full line length of 15,240 metres) and therefore the portion of the previously paid contribution that applies to the development the subject of the current application is €8,790 (1.2666 by 6,940 metres).

### ***Conclusion***

- 7.14. Based on the above, my calculation of the correct financial contribution to be paid in accordance with Condition No.4 as per the terms of the adopted Tipperary County Council Development Contribution Scheme 2020 is as follows:
- 7.15. A total of 6,940 metres of new line (including sections where stringing of existing support structures is proposed) at a rate of €10 per linear metre as per Class 19 of the scheme gives a contribution of €69,400. Less €8,790 which is the proportion of the €19,304 already paid by the first party under Ref. 08/511136 which relates to the new sections of line giving a final amount of €60,610.

## 8.0 Recommendation

- 8.1. Having regard to the above, and based on the following reasons and considerations it is recommended that the planning authority be directed that the terms of the development contribution have not been properly applied in respect of Condition No.4 and direct the council to amend the wording of Condition No. 4 attached to the Notification of Decision as per the condition set out below:

## 9.0 Reasons and Considerations

Having regard to the previous grant of permission in respect of the overall line between Thurles and Borrisoleigh sub stations (Ref. 08/511136), to the payment of a development contribution of €19,304 in respect of the full length of this previously permitted development, to the fact that the current application only relates to the completion of part of this previously permitted development and to the specific provisions of the adopted *Tipperary County Council Development Contribution Scheme 2020* which explicitly references that the scheme aims to avoid any double charging of contributions, it is considered that the application of the terms of the scheme provide for the calculation of contributions on the basis of the extent of new development proposed and also that the allowance made for previous contributions paid would apportion this payment to the extent of uncompleted line. It is therefore considered that the appropriate length of line for the calculation of contribution is 6,940 metres which at a rate of €10 per linear metre equates to a total of €69 400. It is further considered appropriate that this amount would be reduced by €8,790 being the portion of the previously paid contribution (€19,304) that relates to the uncompleted section of the line which is the subject of the subject application, giving a final contribution requirement of €60,610.

## 10.0 Conditions

4. The developer shall pay to the planning authority a financial contribution of €60,610 (sixty thousand six hundred and ten euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Stephen Kay  
Planning Inspector

3<sup>rd</sup> November, 2021