



An  
Bord  
Pleanála

## Inspector's Report

**ABP-312834-22.**

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<b>Development</b>	4,945m <sup>2</sup> of photovoltaic panels on roofs of buildings.
<b>Location</b>	Clonminam Industrial Estate , Portlaoise, Co. Laois.
<b>Planning Authority</b>	Laois County Council.
<b>Planning Authority Reg. Ref.</b>	21827.
<b>Applicant</b>	Lyonara Cold Store Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	First v Condition
<b>Appellant</b>	Lyonara Cold Store Limited
<b>Observer</b>	None.
<b>Date of Site Inspection</b>	Not required.
<b>Inspector</b>	Mairead Kenny.

## 1.0 Site Location and Description

1.1. The subject site for the purposes of the application is part of the roof of an industrial building located in a suburban location at the edge of Portlaoise. The stated site area is 1.9 ha.

## 2.0 Proposed Development

2.1. In all a total of 2111 panels are proposed to be installed on the roof of existing buildings with the resulting generating capacity of 949.95 kWp.

2.2. The stated area of the proposed panels is 4945 m<sup>2</sup>.

2.3. It is stated that the electricity generated from the PV system is to be used only on the premises and not to be exported to the grid.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission subject to conditions.

Condition 6 of the decision states:

“Prior to commencement of development, a contribution shall be payable to Laois County Council, in accordance with the Council’s Development Contribution Scheme 2017 – 2023 in respect of public infrastructure and facilities benefiting development in the area of the planning authority, and that is provided or that is intended will be provided by, or on behalf of, the Council.

The amount of development contribution is set out below and subject to annual revision with reference to the Wholesale Price Index (Buildings and Construction), and penalty interest for late payment, in accordance with the terms of the Council’s Development Contribution Scheme: –

<b>Solar Energy:€10,000 per 1MW output</b>	<b>Amount</b>
Proposed development of 0.94995 MW = €10,000 x 0.95 = €9,500	€9,500

**Reason:** It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Laois County Council in respect of the provision/improvement of public services/infrastructure benefiting development in the area of the planning authority.”

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

The relevant points of the planner’s report are:

- In accordance with the DCS there is a charge of €10,000 per 1 MW output of solar energy. The proposed development is for a scheme which will generate 949.95 kWp equating to 0.94995 MW.
- The amount calculated for the purposes of the contribution payable is €9500.

#### 3.2.2. Other Technical Reports

No other relevant reports.

### 3.3. **Prescribed Bodies**

None.

### 3.4. **Third Party Observations**

None.

## 4.0 **Planning History**

PL.248238 and PL.248244 both relate to proposed renewable energy developments.

In both cases contribution appeals were lodged – the then relevant scheme was the 2013-2017 Laois County Development Contribution Scheme.

While the Inspector recommended that the level of contribution should be applied based on the Maximum Export Capacity the Board determined that the terms of the Scheme relates to the amount of electricity generated rather than the electricity exported to the national grid from those installations.

## 5.0 Policy Context

### 5.1. Laois County Development Contribution Scheme 2017-2023

I attach a copy of the Scheme.

I refer the Board to the exemptions in section 12.8 and to section 16 which sets out the amount payable for categories of development and in relation to 'Solar Energy' specifies an amount of '€10,000 per 1 MW output'.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appellant states:

- The terms of the Development Contribution Scheme has not been properly applied.
- The application details indicate that the peak generation capability of the installation is 949.95kWp in DC.
- When converted to AC by the inverters it will generate 600 kW (0.6 MW).
- There is an exemption under category 12.8 for renewable energy development consisting of projects not exceeding 0.5 MW output. We understand that less than 0.5 MW is free of development contributions.
- The rate of charge for non-residential solar energy is €10,000 per 1 MW.
- We request that the charge be adjusted accordingly. The amount payable is €1000.

### 6.2. Planning Authority Response

No submission received by the response date of 7 June 2022.

### 6.3. Observations

None.

## 6.4. Further Responses

None.

## 7.0 Assessment

7.1. The basis for the appeal relates to:

- the basis for calculation in terms of the amount of electricity
- the exemptions under 12.8 of the Development Contribution Scheme.

### 7.2. Basis for calculation

7.3. I have referenced above two appeal cases which were considered by the Board and which relate to the 2013 - 2017 Scheme which preceded the Laois County Development Contribution Scheme 2017-2023, which is relevant scheme for the purposes of this appeal.

7.4. The Board determined that the relevant basis for calculation is the amount of electricity generated rather than the amount which is exported to the national grid based on the wording of the previous scheme. Under that scheme the amount calculable was related to developments 'generating' a specified amount of electricity.

7.5. In contrast the 2017-2023 Scheme clearly specifies that the 'output' is what is relevant as the basis for calculations. The appellant states that the peak generation capability of the panels on the roof is 949.95 kWp in DC. However, this is converted to AC by the inverters which generate an equivalent of 0.6 MW AC. It is that amount which the appellant considers is the relevant output.

7.6. The planning authority has not presented further submissions following the appeal.

7.7. I agree with the appellant that the relevant amount of electricity is the output, which is 0.6MW.

7.8. I note that the electricity generated from the PV system is to be used only on the premises and not to be exported to the grid. I have considered whether the condition should be removed in its entirety on the basis that there would be no electricity exported from the site for use by others. The scheme does not provide for any exemption for such circumstances.

7.9. I have also considered whether the word output infers export to the electricity grid. I do not consider that such interpretation would be appropriate. I conclude that the meaning of output should be related strictly to the output from the panel, 0.6MW.

#### 7.10. Exemptions

7.11. Section 12.8 of the Development Contribution Scheme set out an exemption for renewable energy development consisting of renewable energy projects not exceeding 0.5 MW output. The exemption applies to 'projects' not exceeding 0.5 MW output. It is not stated that the first 0.5 MW of every development will be exempted from the contribution.

7.12. I do not consider that the appellant's interpretation of section 12.8 is correct. The relevant information for the purposes of the Board's decision is the wording of the exemption, which I am satisfied is relevant to the provision of exemptions for small projects. I see no basis for concluding that the exemption is intended to apply on a widespread basis to all renewable energy projects.

#### 7.13. Calculation and Conclusion

7.14. Under the Laois Development Contribution Scheme 2017-2023 the subject development falls under the category of 'non-residential' and the charge for solar energy is at the rate of €10,000 per 1 MW output.

7.15. No exemption applies.

7.16. The amount payable should be based on 0.6MW output at a rate of €10,000 per MW. Payment of €6,000 should be required.

### 8.0 Recommendation

8.1. I recommend based on the reasons and considerations in Schedule 1 that the planning authority be directed to amend condition 6 as set out in Schedule 2 below.

### 9.0 Schedule 1

It is considered that the terms of the Laois Development Contribution Scheme 2017-2023 have not been properly applied in respect of the subject development, in that

the terms of the Scheme require payment in respect of renewable energy installations on the basis of €10,000 per 1MW output rather than the amount of electricity generated.

It is considered that the exemption under section 12.8 of the Scheme is relevant to developments of total output not exceeding 0.5 MW and does not therefore apply in this instance having regard to the scale of the development.

## 10.0 **Schedule 2**

The developer shall pay to the planning authority a financial contribution of €6,000 (six thousand 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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Mairead Kenny  
Senior Planning Inspector

8 June 2022

