



An
Bord
Pleanála

Inspector's Report ABP-313557-22

Question

Whether works consisting of proposed underground 10Kv grid connection to connect a permitted solar farm substation to the existing 38kV Castlerea substation is or is not development or is or is not exempted development

Location

Rathleg, Castlerea, Co. Roscommon

Declaration

Planning Authority

Roscommon County Council

Planning Authority Reg. Ref.

DED514

Applicant for Declaration

Elgin Energy Services Ltd.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Applicant.

Owner/ Occupier

Elgin Energy Services Ltd.

Observer(s)

None.

Date of Site Inspection

27th June 2023.

Inspector

Barry O'Donnell

1.0 Site Location and Description

1.1. The subject site lies in a rural area, to the east of Castlerea, County Roscommon. It comprises of, primarily, the section of the R377 between the Castlerea ESB substation and a greenfield site that has been granted planning permission for a solar farm development, approx. 1.1km to the north. The route runs southward from the solar farm site, before turning west at the junction of the R377 and an unnamed local road.

2.0 The Question

2.1. The question the subject of the referral before the Board is: -

'Whether works consisting of a proposed underground 10kV grid connection to connect a permitted site solar farm substation to the existing 387kV Castlerea substation is or is not development, constitutes a material change of use, and is or is not exempted development.'

2.1.1. The referral is accompanied by an Ecological Impact Assessment and an Appropriate Assessment Screening report, both of which were completed by RPS Consultants.

2.2. Having considered the application and referral documents, I note that there appears to be a typographical error in the question posed, whereby Castlerea substation is identified in the initial submission as a 38kV substation, but it is now identified as a 387kV substation.

2.3. In view of the above, I propose to reword the question before the Board slightly, as follows: -

'Whether works consisting of a proposed underground 10kV grid connection to connect a permitted site solar farm substation to the existing 38kV Castlerea substation is or is not development and is or is not exempted development.'

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The Planning Authority issued a declaration on 14th April 2022, which states that the proposed development is development and is not exempted development.

3.2. Planning Authority Reports

- 3.2.1. A Planning Report dated 14th April 2022 has been provided, which reflects the Planning Authority's determination on the application. It states that the proposal has the potential to endanger public safety by reason of a traffic hazard or obstruction of road users and, in view of the provisions of Article 9(1)(a)(iii) of the Regulations, does not constitute exempted development.
- 3.2.2. Other Technical Reports

None.

4.0 Planning History

17/295: Permission granted on 29th September 2017 for a solar farm comprising photovoltaic panels on ground mounted frames, ESB terminal station, single storey switchgear enclosure, 4 No. single storey inverter stations, ducting & underground electrical cabling, perimeter fencing mounted CCTV cameras, provision of new access to public road as well as internal access track, and all associated site development and landscaping works.

- Condition No. 2 states that the permission must be implemented with a 10-year period.
- Condition No. 10 states that the development shall be carried out in accordance with details outlined in the Cultural Heritage Assessment and Archaeological Assessment Reports submitted with the application, including relocation of elements of the development to a distance of at least 60m from the perimeter of an adjacent Recorded Monument, R0027-001

- Condition No. 23 states that the permission shall be for a 30-year period following commissioning of the array.

5.0 Policy Context

5.1. Roscommon County Development Plan 2022-2028

5.1.1. The subject site is located in a rural, unzoned part of County Roscommon.

5.2. Natural Heritage Designations

5.2.1. The site is not located within or adjacent to any designated European site, the closest such sites being Bellanagare Bog SPA (Site Code 004105) and SAC (Site Code 000592), which lie c.3.9km north.

5.3. Environmental Impact Assessment Preliminary Screening

5.3.1. I note that the applicant submitted a copy of an Ecological Impact Assessment that was submitted as part of the original application for the solar farm development. The document includes an assessment of likely significant effects of the solar farm development and proposed mitigation measures.

5.3.2. The proposed development is functionally connected to the solar farm development approved under Reg. Ref. 17/295 and I am satisfied that they form a single solar farm development.

5.3.3. Notwithstanding the submission of the Ecological Impact Assessment, solar farm developments are not a prescribed class for the purposes of EIA, as set out in Schedule 5 of the Planning and Development Regulations 2001 – 2023. I am satisfied, in view of this, that the requirement to undertake EIA can be excluded at the preliminary screening stage.

6.0 The Referral

6.1. Referrer's Case

- The cable will connect the permitted on-site substation to the ESB substation at Castlerea, with 0.95km of the route along the public road corridor and 0.19km

within the solar farm landowner's landholding. The cable will be laid in a trench and will be backfilled appropriately, with the reinstatement agreed in advance with the Planning Authority and other relevant stakeholders.

- A road opening licence will be required, under which a temporary traffic management plan will be submitted and agreed with the County Council. The public will not be endangered through creation of a traffic hazard and road users will not be disrupted.
- The proposal does not breach any of the conditions of Article 9 of the Regulations, which sets out restrictions on exempted development provisions.
- The proposal is subject to Class 26 of Part 1, Schedule 2 of the Regulations and in view of the absence of any restriction on exemption, is exempted development.
- The Board has previously made similar determinations, under Refs. ABP-302895-18 and ABP-307454-20.

6.2. Planning Authority Response

6.2.1. None received.

6.3. Further Responses

6.3.1. None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2(1) of the Planning and Development Act 2000, as amended (the Act) states - "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;

7.1.2. Section 2 (1) of the Act states - “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.

7.1.3. Section 3(1) of the Act states – 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.

7.1.4. Section 4(2)(a)(i) of the Act states ‘*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—*

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, or...’

7.1.5. Section 4(4) of the Act states ‘*Notwithstanding..... any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.’*

7.2. **Planning and Development Regulations, 2001**

7.2.1. Article 3(3) – Interpretation

“Electricity undertaking” means an undertaker authorised to provide an electricity service.

7.2.2. Article 6(1) – Exempted Development

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.

7.2.3. Article 9 – Restrictions on Exemption

Article 9(1) - Development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would-

- i. contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- 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,
- (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,

7.2.4. Schedule 2, Part 1 – Exempted Development

Class 26: 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.

Conditions and limitations

None.

7.3. **Relevant Referral Cases**

- 7.3.1. The Board has made a number of determinations on similarly worded referrals. Examples include: -

ABP-307454-20: The Board determined that the construction of an underground 20 kV medium voltage cable within the public road between a permitted solar farm and the 38 kV substation, is development and is exempted development.

ABP-302895-18: The Board determined that the provision of a medium voltage (20kV) underground grid connection between a permitted solar farm at Dysart, Johnstownbridge, County Kildare and the Dun firth ESB substation at Dunfirth, Johnstownbridge, County Kildare is development and is exempted development.

RL19.RL3503: The Board determined that the provision of a connection between the 110kV substation of the Yellow River wind farm 110kV substation at Rhode, County Offaly is development and is exempted development.

8.0 **Assessment**

8.1. **Background**

- 8.1.1. The applicant currently has permission to construct a solar farm with an export capacity of approx. 4.2MVA on the site, pursuant to permission Reg. Ref. 17/295. The applicant seeks a determination under Section 5 in relation to a proposed underground 10Kv grid connection, to connect the permitted solar farm substation to an existing 38Kv substation at Castlerea. The applicant states that the proposed cable involves 0.95km of the route along the public road corridor and 0.19km within the solar farm landowner's landholding. They further state that the cable will be laid in a trench and will be backfilled.

8.2. **Is or is not development**

- 8.2.1. Development is defined, under Section 3(1) of the Planning and Development Act, 2000 – 2014, as “the carrying out of works on, in, over or under land...” Works are defined, under Section 2(1) of this Act, as including “any act or operation of construction, excavation, demolition, extension...”
- 8.2.2. As has been outlined, the installation of the subject cable involves excavation and backfilling along a 0.95km section of the public road and a further 0.19km within the solar farm landowner's landholding. The development falls within the aforementioned Section 3(1) description and therefore constitutes ‘development’.

8.3. Is or is not exempted development

- 8.3.1. In the grounds of referral, the applicant states that the proposal is subject to Class 26 of Part 1, Schedule 2 of the Regulations and in view of the absence of any restriction on exemption, is exempted development. The said Class 26 provides an exemption for *'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.'*
- 8.3.2. Class 26 applies to “any undertaker authorised” and, in this context, I have considered the definition of ‘electricity undertaking’ provided at Article 3(3) of the Regulations, which is defined as “...*an undertaker authorised to provide an electricity service.*”
- 8.3.3. I would also draw the Board’s attention to the definition of “Statutory Undertaker” provided at Section 2 of the Act, which is defined 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, or...*”
- 8.3.4. I consider the applicant, Elgin Energy Services Ltd, falls under the category of “any undertaker authorised” in view of the fact that it currently has planning permission under Section 34 of the Act for a development related to the provision of electricity, i.e. the construction of a solar farm with an export capacity of approx. 4.2MVA.
- 8.3.5. It is also relevant to consider previous Board determinations related to similar referral questions, a number of which are set out at Section 7.3 of my Report, on all of which the Board determined that applicants granted permission for an electricity generating development fall within the scope of Class 26.
- 8.3.6. In view of the above, I am satisfied that the proposed development falls within the scope of Class 26.

8.4. Restrictions on exempted development

- 8.4.1. There are no conditions or limitations attached to Class 26.
- 8.4.2. Notwithstanding the above, Article 9(1) of the Regulations contains prescribed circumstances where a development that would otherwise constitute exempted

development would not. Items (iii), (vii) and (viiB), set out at Section 7.2 of my Report, are pertinent to the referral.

(iii) – Traffic Hazard or Obstruction of Road Users

- 8.4.3. The Planning Authority's determination on the application is grounded in the conclusion that the proposal has the potential to endanger public safety by reason of a traffic hazard or obstruction of road users.
- 8.4.4. In referring the determination, the applicant identifies that the proposed development requires a Road Opening Licence from the County Council and will be subject to a Traffic Management Plan, to be agreed with the Council in advance.
- 8.4.5. I agree with the Planning Authority that the proposed development is likely to disrupt traffic on the R377 but, as the applicant states, a Road Opening Licence is required in order to undertake excavation works on a public road. As part of the licensing process, the Roads Authority has the power to attach such conditions or requirements as it sees fit, which includes the power to require submission and implementation of a traffic management plan for the duration of the works. Subject to appropriate traffic management measures being implemented and maintained for the duration of the works, I am satisfied that the proposed development will not endanger public safety by reason of traffic hazard or obstruction of road users.

(vii) – Excavation of places of archaeological interest

- 8.4.6. The development lies in proximity to Recorded Monument No. RO027-001, a ringfort. The location of the approved substation, as identified on the referral drawings, is in excess of 100m from this Recorded Monument.
- 8.4.7. I note that the conditions attached to permission Reg. Ref. 17/295 required that the development should be amended such that all elements are a distance of at least 60m from the Recorded Monument. This requirement was grounded in the submission from the Department of Culture, Heritage and the Gaeltacht, which requested a setback of 60m.
- 8.4.8. The proposed development does not encroach into the site beyond the location of the approved substation. In view of the level of separation from the Recorded Monument, I am satisfied that it will not be affected by the development.

(viiB) – Appropriate Assessment

- 8.4.9. The site is not located within or adjacent to any designated European site, the closest such sites being Bellanagare Bog SPA (Site Code 004105) and SAC (Site Code 000592), which lie c.3.9km north. Available EPA drainage maps indicate that the site is downstream of the SPA/SAC complex and, in view of this, I am satisfied that there is no real likelihood of significant effects on this European site, arising from the development.
- 8.4.10. Corliskea/Trien/Cloonfelliv Bog SAC (Site Code 002110) lies c.5km south and the EPA maps indicate that surface waters drain southward, towards it, from the subject site. The maps indicate that the cable route passes close to tributaries of the Termon River in two locations, as it travels southward to the ESB substation, resulting in a possibility of suspended solids being discharged to the water during construction. But, in such an event, the point of entry is a minimum of c.900m from the Termon River and I consider it is unlikely that suspended solids would be discharged to the main body of the river. In the unlikely event of such a transfer, the point of entry is c.8.4km from the European site and I am satisfied that there is no real likelihood of significant effects on this European site, arising from the development. Indeed, I further note that the EPA drainage maps indicate that surface waters turn east, away from the European site, and do not actually drain into it.
- 8.4.11. In view of my assessment, I conclude that the proposed development is not likely to have a significant effect on any European site, in view of its Conservation Objectives and there is no requirement to undertake Stage 2 Appropriate Assessment.

Conclusion

- 8.4.12. In view of my assessment, I conclude that the development is not restricted by any of the provisions of Article 9(1) of the Regulations.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether works consisting of a proposed underground 10kV grid connection to connect a permitted site solar farm

substation to the existing 38kV Castlerea substation is or is not development and is or is not exempted development.

AND WHEREAS Elgin Energy Services Ltd requested a declaration on this question from Roscommon Council and the Council issued a declaration on the 14th day of April, 2023 stating that the matter was development and was not exempted development:

AND WHEREAS the applicant referred this declaration for review to An Bord Pleanála on the 11th day of May, 2022:

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

- Section 2(1) of the Planning and Development Act, 2000, as amended,
- Section 3(1) of the Planning and Development Act, 2000,
- Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001 - 2023
- Class 26 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 - 2023, and
- The planning history of the site.

AND WHEREAS An Bord Pleanála has concluded that works consisting of a proposed underground 10kV grid connection to connect a permitted on site solar farm substation to the existing 38kV Castlerea substation constitute 'development', as defined under Section 3(1) of the Planning and Development Act, 2000 as amended and would come generally within the scope of the exempted development provision provided at Class 26 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 – 2023.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that works consisting of a proposed underground 10kV grid connection to connect a permitted site solar farm substation to the existing 38kV Castlerea substation is development and is exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Barry O'Donnell
Planning Inspector

17th July 2023.