



An
Bord
Pleanála

Inspector's Report

ABP-318699-23

Development

Overhead lines including construction of poles over two kilometres with associated site works to complete loop project.

Location

Passes through the townlands of Cellarstown East, Higginstown, Eagleshill, Cellarstown West and Cellarstown Upper, Kilkenny.

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

2360443

Applicant(s)

ESB The Electricity Supply Board.

Type of Application

Permission

Planning Authority Decision

Grant Permission Subject to Conditions

Type of Appeal

Third Party

Appellant(s)

Patrick Prendergast.

Observer(s)

None

Date of Site Inspection

19/09/2024

Inspector

Alan Di Lucia

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	5
3.4. Third Party Observations	6
4.0 Planning History	6
5.0 Policy Context	6
5.1. Development Plan	6
5.3. Natural Heritage Designations	8
5.4. EIA Screening	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Applicant Response	9
6.3. Planning Authority Response	9
6.4. Observations	10
6.5. Further Responses	10
7.0 Assessment	10
8.0 AA Screening	12
9.0 Recommendation	12
10.0 Reasons and Considerations	12
11.0 Conditions	13
Appendix 1 – Form 1: EIA Pre-Screening	

1.0 Site Location and Description

- 1.1. The subject site is located approximately 1.5 km to the east of Kilkenny City. The location is rural and the activities at this location are agricultural. The route of the proposed overhead cables traverses across two public roads, minor drains, and agricultural private lands for a total length of 2km. The lands have varying topology, varying from undulating topography along the east part between the two public roads to a more level topography along the western end from the public road to the existing electrical network.

2.0 Proposed Development

- 2.1. The proposed development consists of the completion of the partially constructed 38kV overhead line, which forms part of the Kilkenny loop connection. The proposed development involves the construction of the remaining 12 poles (12-23) ranging in height between 12m to 20m and stringing with overhead lines, over a distance of 2km, and all associated site works. These works will complete the loop project previously granted permission in 2005.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a notification of the decision to grant planning permission subject to eight conditions.

Conditions of Note include:

- Cond 4. Archaeologist monitoring and report to be forwarded to Planning Authority and National Monuments Service.
- Cond. 6 Pole set 13 to comply with minimum distances from houses.
- Cond.8 Pole set 18 shall be minimum distance from public roads.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report had regard to the following planning issues. (Note: No Further Information was requested by the Planning Authority.)

- That existing overhead 38kV ESB Lines and larger ESB service transmission lines are prevalent in the surrounding area. The site is located within a lowland transitional landscape and will not impede any protected views as set out in the Kilkenny City and County Development Plan 2021-2027[KCCDP}, therefore a Visual Impact and Landscape Impact Assessment is not considered necessary.
- That the proposal is in accordance with the policies of the KCCDP that existing infrastructure should be used in preference to new grid infrastructure.
- The key benefits relate to a resilient and robust electricity network, achieve net zero greenhouse gas emissions, and provide for the continued growth in demand for electricity.
- The proposal aligns with National, Regional, and local policy in relation to energy supply.
- Addresses the concerns of the third-party submissions by including conditions regarding the distances of the utility poles from residential properties and public roads.
- The Planner's Report did not consider that either Appropriate Assessment or Environmental Impact Assessment was required.

3.2.2. Other Technical Reports

- Road Department No objection subject to conditions

3.3. Prescribed Bodies

Department of Housing, Local Government and Heritage. Grant permission subject to conditions relating to archaeological monitoring.

3.4. Third Party Observations

Three third party submissions received by the Planning Authority related to the following issues.

- Poles 15-18 would adversely impact on farm.
- Alternative route suggested to ESB.
- Concern regarding distance of existing pole and proximity to residential property
- Concern that powerline will cross entrance to house which would have a negative visual impact for the residents.

4.0 Planning History

PA Ref. 05/452

Permission to erect a 38kV overhead line from the new steel mast in the existing 110kV station in the townland of Scart to an existing steel mast position at Garrincreen. (This permission was only partially completed)

5.0 Policy Context

5.1. Development Plan

Kilkenny County and City Development Plan 2021-2027 ([KCCDP] is the relevant statutory plan for the area.

Section 10.3 relates to energy, and states that “*The Council Recognises the need to increase electrical infrastructure capacity and security.*”

The Plan also states that “*The Council will support the development of a safe, secure and reliable supply of electricity and to support and facilitate the development of enhanced networks and facilitate new transmission infrastructure projects that might be brought forward in the lifetime of the Plan.*”

5.2. National Energy and Climate Policy

5.2.1. Climate Action and Low Carbon Development (Amendment) Act 2021

Introduces a legally binding path to net zero emissions no later than 2050, and to a 51% reduction in emissions by the end of the decade.

5.2.2. Policy Statement on Security of Electricity Supply

The Programme for Government commits Ireland to an average 7% per annum reduction in overall greenhouse gas emissions from 2021 to 2030 (a 51% reduction over the decade) and to achieving net zero emissions by 2050. In order to contribute to the achievement of these targets, the Government has committed that up to 80% of electricity consumption will come from renewable sources by 2030 on a pathway to net zero emissions. Ensuring continued security of electricity supply is considered a priority at national level and within the overarching EU policy framework in which the electricity market operates.

5.2.3. Climate Action Plan 2024

Climate Action Plan 2024 is the third annual update to Ireland's Climate Action Plan 2019 and the second to be prepared under the Climate Action and Low Carbon Development (Amendment) Act 2021. It builds on the introduction of carbon budgets and sectoral emissions ceilings in the Climate Action Plan 2023 and sets a course for Ireland's targets to halve emissions by 2030 and reach net-zero no later than 2050. These national targets align with Ireland's obligations under EU and international treaties, most notably the Paris Agreement (2015) and the European Green Deal (2020).

5.2.4. National Planning Framework Project Ireland 2040

It is a goal of the National Planning Framework (NPF) to refocus planning to tackle Ireland's higher than average carbon-intensity per capita and enable a national transition to a competitive low carbon, climate resilient and environmentally sustainable economy by 2050, through harnessing our country's prodigious renewable energy potential, including, inter alia onshore and offshore wind energy.

5.3. **Regional Spatial & Economic Strategy for the Southern Region(RSES)**

The RSES supports the development of a safe, secure and reliable supply of electricity and to support and facilitate the development of enhanced electricity networks and facilitate new transmission infrastructure projects that might be brought forward in the lifetime of this plan under EirGrid's (2017) Grid Development Strategy

(subject to appropriate environmental assessment and the planning process) to serve the existing and future needs of the Region and strengthen all-island energy infrastructure and interconnection capacity.

5.4. Natural Heritage Designations

The following European Sites are located within the zone of influence of the appeal site.

River Barrow and River Nore SAC (002162) within a distance of 1.5 km

River Noire SPA (004233) within a distance of 1.5 km

5.5. EIA Screening

I have carried out a Pre-Screening (See Form 1 appended to this report)

It concluded that the proposed development does not fall within a class for which EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- In 2006, ESB planned to build overhead lines through the appellants' lands. At the time they objected and proposed an alternative route. Despite this objection the ESB continued to construct the overhead line outside the boundary of the lands owned by the appellant.
- that ESB did not consider their objection at the time of the first planning permission in 2006. The current planning decision fails to recognise this, by not including an appropriate condition in the grant of permission.
- Requests that a condition should have been included to require ESB to engage with them in relation to their land.

6.2. Applicant Response

The response can be summarised as follows:

- Highlights that the issues raised in the appeal have already been the subject of a submission to Kilkenny County Council during the planning process. It also highlights that the appeal does not contain any planning issues and relates to historical dealings with ESB in relation to impacts on farming and property rights, which lie outside the scope of the proper planning and sustainable development of the area.
- The route was granted permission in 2005, most of the circuit was constructed based on the permission. ESB engaged with landowners and irreconcilable differences arose between the landowner and ESB in this regard. Progress has been made between ESB and farming groups to ensure proper mechanisms are in place to compensate landowners.
- Construction continued outside of the lands in question, but due to circumstances at the time, the operational need for the circuit reduced and the ESB function was able to continue without completion of the circuit. This has changed and demand in the area has increased, completion of the circuit is now required to meet the requirements of the Climate Action Plan.
- ESB has engaged with the landowner regarding the alternative route proposed by the appellant, with a commitment to reviewing this route. The outcome will be considered when complete and the findings communicated back to the landowner. Until such a time, ESB are progressing with the current proposal.
- The ESB has long standing policies for addressing landowner issues and it is evident that the rights of the appellant in relation to the development of overhead lines, will be addressed through this process and the Board are in a position to make a determination solely on the basis of the proper planning and sustainable development of the area.

6.3. Planning Authority Response

No Response

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

7.1. Having examined the application details and all documentation on file, including the submission and applicants' response received in relation to the appeal, and inspected the site and having regard to local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Appellants' Grounds of Appeal.
- Principle of Development.
- Other Issues

7.2. **Appellants' Grounds of Appeal**

7.2.1. The Electricity Supply Act 1927 established the legal framework under which the ESB operates. The Act outlines the powers and responsibilities of the ESB in terms of planning, construction, operation and maintaining electricity facilities. The ESB has adopted procedures and policies in relation to engagement with landowners, which are based on the provisions of the Electricity Supply Act. Therefore, I consider that attaching a condition to a planning permission to ensure landowner engagement is not within the remit of the Board to consider as such engagement is provided under the Electricity Supply Act 1927 and not provided under the Planning and Development Act, 2000 (as amended).

7.2.2. I note that Section 34(13) of the Planning and Development Act 2000, as amended, states that, "*A person shall not be entitled solely by reason of a permission under this section carryout any development*". The grant of planning permission does not give the ESB entitlement to carry out the development without complying with their own procedures and relevant legislation to progress the proposal which will ensure that infringement of third-party rights is avoided.

- 7.2.3. In conclusion, I note that the reason for objection to the proposed development was not set out in the grounds of appeal and, as such, does not identify any clear planning issues. Therefore, I will continue to assess the proposed development 'de novo'.

7.3. Principle of Development

- 7.3.1. The proposed development consists of the completion of the partially constructed 38kV overhead line which forms part of the Kilkenny loop connection. It involves the construction of 12 remaining poles (12-23) and stringing the overhead lines for a distance of 2km. The stated key benefits include the establishment of a resilient and robust electricity network and contribute to the achievement of net zero greenhouse gas emissions. Therefore, I am satisfied, based on the above, that the proposed development aligns with national policy as it would contribute to ensuring energy security for Kilkenny.
- 7.3.2. Following a site inspection, I note that the topography on the eastern lands is undulating. These lands include the locations of poles 15 to 18, which relate to the appellants' lands. The western lands are relatively level. ESB transmission lines are prevalent in the surrounding area. The subject site is located within a lowland transitional landscape area under the KCCDP and not located within any high amenity or visually sensitive landscapes. I am satisfied that the proposed development will not have a negative impact on the character of the landscape at this location. I am also satisfied that the construction of pole sets at location 15 to 18, which relate to the appellants' lands will not seriously adversely impact on farming operations as the land take for the proposed development is minimal and will not subdivide the farming lands.
- 7.3.3. I am satisfied that if pole sets are constructed in accordance with relevant ESB Safety Guidelines and Code of Practice, and TII Publication DN-GEO-03036 May 2023 "Cross Sections and Headroom" that the proposal would not seriously impact on the public road network in the area or on the residential amenities of properties in the vicinity of the proposed overhead line.
- 7.3.4. Therefore, I conclude, that the principle of the development proposed at this location is acceptable from a National Policy framework as outlined in Section 5.2 and that it would not have any adverse impact on the landscape character of the area and if

permitted would be in accordance with the proper planning and sustainable development of the area. I recommend that the development as proposed can be considered in principle and that permission should be granted.

7.4. Other Issues

- In response to the report from the Department of Housing, Local Government and Heritage, I have included a condition relating to archaeological monitoring.
- I have included a condition that a Construction Management Plan is prepared and submitted to the Planning authority to ensure minimal disruption occurs in the area during construction.

8.0 AA Screening

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site River Barrow/Nore SAC, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 Recommendation

Having regard to the foregoing, I recommend that permission is granted subject to conditions hereunder.

10.0 Reasons and Considerations

In coming to this recommendation, I had regard to the grounds of appeal, my site inspection and my assessment of the planning issues and I also had regard to the following:

- National Planning Framework
- Climate Action and Low Carbon Development (Amendment) Act 2021

- Policy Statement on Security of Electricity Supply
- Climate Action Plan 2024
- Regional Spatial & Economic Strategy for the Southern Region
- Kilkenny County and City Development Plan 2021-2027

I considered that the proposed development is acceptable in respect of its likely effects on the environment and its likely consequences for the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application to the Planning Authority on the 5th of October 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interests of clarity.

2. The developer shall engage a suitably qualified archaeologist to monitor (licensed under the National Monuments Acts) all site clearance works, topsoil stripping, and groundworks associated with the development.
 - The use of appropriate machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary.
 - Should archaeological remains be identified during the course of archaeological monitoring, all works shall cease in the area of archaeological interest pending a decision of the planning authority, in consultation with National Monuments Service regarding appropriate

mitigation which may include preservation in-situ or full archaeological excavation.

- The developer shall facilitate the archaeologist in recording any remains identified. Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer.

Reason: To ensure the continued preservation [either in situ or by record] of places, caves, sites, features or other objects of archaeological interest

3. Prior to commencement of works, the developer shall submit to, and agree in writing with the planning authority, a Construction Management Plan, which shall be adhered to during construction. This plan shall provide details of intended construction practice for the development, including hours of working, noise and dust management measures and off-site disposal of construction/demolition waste and shall include appropriate traffic management proposals where work phases impact the public road network.

Reason: In the interest of public safety and amenity.

4. The developer shall ensure that the locations of all proposed pole sets comply with the minimum separation distances in relation to residential properties and water courses as set out under ESB Safety Guidelines and Code of Practices, and that locations along the public road network comply with the provisions of TII Publication "*Cross Sections and Headroom, DN-GEO-03036*" May 2003. Details of any changes to pole set locations will be agreed with the Planning Authority.

Reason: In the interests of safety and protection of residential amenity and traffic safety.

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.

Alan Di Lucia
Senior Planning Inspector

October 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318699-23		
Proposed Development Summary	The proposed development consists of the completion of the partially constructed 38kV overhead line, which forms part of the Kilkenny loop connection. The proposed development involves the construction of the remaining 12 poles (12-23) and stringing with overhead lines, over a distance of 2km, and all associated site works. These works will complete the loop project previously granted permission in 2005.		
Development Address	Passes through the townlands of Cellarstown East, Higginstown, Eagleshill, Cellarstown West and Cellarstown Upper, Kilkenny.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No		Class 20 Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.	Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
	Threshold	Comment (if relevant)	Conclusion

No		N/A		No EIAR or Preliminary Examination required
Yes		Class/Threshold.....		Proceed to Q.4

4. Has Schedule 7A information been submitted?				
No			Preliminary Examination required	
Yes			Screening Determination required	

Inspector: _____ Date: _____

Appropriate Assessment ABP-318699-23

Appropriate Assessment- Screening

Compliance with Article 6(3) of the Habitats Directive

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background on the Application

A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening determination has been carried out *de-novo*.

Screening for Appropriate Assessment- Test of likely significant effects

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

In summary, the development comprises:

- The completion of the partially constructed 38kV overhead line, which forms part of the Kilkenny loop connection. The proposed development involves the construction of the remaining 12 poles (12-23) and stringing with overhead lines, over a distance of 2km, and all associated site works. These works will complete the loop project previously granted permission in 2005.
- The characteristics of the proposed development involve temporary construction activities associated with erecting pole sets and stringing of the pole sets in open farmland/private lands on the outskirts of Kilkenny City. The lands are at a distant location relative to designated European sites (closest being River Nore/Barrow SAC situated approx.1.5km away to the west) with no pathway from where the pole sets are located.

Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

Construction related

- Vegetation Clearance
- Surface water run-off from soil
-

Submissions and Observations

No submissions or observations related to Natura 2000 sites

European Sites

The development site is not located in or immediately adjacent to a European site. The closest European site is River Barrow/Nore SAC, within 1.5 Km of the proposed development.

A summary of European Sites that occur within a possible zone of influence of the proposed development is presented in the table below. Where a possible connection between the development and a European site has been identified, these sites are examined in more detail.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)	Considered further in screening Y/N
River Noire SPA (004233)	Kingfisher (<i>Alcedo atthis</i>)	1.5	N	Y
River Barrow/Nore SAC (002162)	<p>Habitats</p> <ul style="list-style-type: none"> • Estuaries • Mudflats and sandflats not covered by seawater at low tide • Reefs • Salicornia and other annuals colonising mud and sand • Atlantic salt meadows (Glauco-Puccinellietalia maritimae) • Mediterranean salt meadows (Juncetalia maritimi) Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation • European dry heaths • Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels • Petrifying springs with tufa formation (Cratoneurion)* • Old sessile oak woods with Ilex and Blechnum in the British Isles • Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* • 	1.5	N	Y

	<p>Species</p> <ul style="list-style-type: none"> • Desmoulin's Whorl Snail (<i>Vertigo moulinsiana</i>) • Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>) • White-clawed Crayfish (<i>Austropotamobius pallipes</i>) • Sea Lamprey (<i>Petromyzon marinus</i>) • Brook Lamprey (<i>Lampetra planeri</i>) • River Lamprey (<i>Lampetra fluviatilis</i>) • Twaite Shad (<i>Alosa fallax fallax</i>) <p>Salmon (<i>Salmo salar</i>) Otter (<i>Lutra lutra</i>) Killarney Fern (<i>Trichomanes speciosum</i>) Nore Pearl Mussel (<i>Margaritifera durrovensis</i>)</p>			
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Identification of likely effects

No elements are identified that may give rise to likely effects on a European Site t due to the distance from and lack of connectivity to the habitat for which the site is designated.

Mitigation measures

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

Screening Determination

Finding of no likely significant effect

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site River Barrow/Nore SAC, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

This determination is based on the following:

The nature and extent of the development proposed and the distance from the European Site and demonstrated lack of any ecological connections.

.....

AA Screening summary matrix.

Summary Screening Matrix				
European Site (link to conservation objectives www.npws.ie)	Distance to proposed development/ pathway receptor	Possible effect alone	In combination effects	Screening conclusions:
River Barrow/Nore SAC (002162)	Within 1.5 km. This site is outside of any zone of influence of the development due to the lack of ecological connections to the specific habitat type for which the site is designated.	No possibility of effects due to the distance from and lack of connections to the habitat for which this site is designated	No effect	Screened out for need for AA
River Noire SPA (004233)	Within 1.5 km. This site is outside of any zone of influence of the development due to the lack of ecological connections to the specific habitat type for which the site is designated.	No possibility of effects due to the distance from and lack of connections to the habitat for which this site is designated	No effect	Screened out for need for AA

