



An
Bord
Pleanála

Inspector's Report

ABP-318795-24

Development

Construction of Gas Insulated Switchgear (GIS) switchboard building with all associated site works.
Removal of reactors and extension.
Natura Impact Statement submitted to planning authority.

Location

Poolbeg 220kV Electrical Substation and adjacent land, Pigeon House Road, Dublin 4 on site measuring 3.6ha.

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

4057/23

Applicant(s)

EirGrid

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

First Party against Condition

Appellant(s)

EirGrid

Observer(s)

None

Inspector

Gillian Kane

1.0 Site Location and Description

- 1.1.1. This is a first party appeal against a financial contribution condition which was attached to the Planning Authority's notification of intention to grant permission. As this is an appeal in respect of conditions requiring a financial contribution, the provisions of section 48 of the Planning and Development Act 2000 apply and the Board is restricted to considering this matter alone and cannot consider the matter de novo. I have therefore confined my assessment to the condition in question.
- 1.1.2. Having regard to the nature of the appeal before the Board (i.e. first party against conditions) and the information available on file, a site inspection was not deemed necessary in this instance.

2.0 Planning Authority Decision

2.1. Proposed Development

- 2.1.1. On the 30th June 2023, permission was sought for a development described as the construction of a new 220kV gas insulated switchgear (GIS) Switchboard building measuring 65.2 x 51.8m and 17m high; construction of 2no. new shunt reactor units (each within a 4.3m x 8.2m x 5.5m enclosure) and 1no. new series reactor unit (within a 4.7m x 12.7m x 16.6m enclosure), associated connections to the 220kV GIS switchboard building an decommissioning and removal of 2no. existing shunt reactors; an extension of the existing internal access road around the new GIS switchgear building and 4no. car parking spaces; all ancillary and associated works to facilitate the development including removal of existing perimeter berm and new 2.6m high boundary fence around extended substation compound, perimeter planting, 3m high lightning protection to new GIS switchboard building, surface water drainage network including an attenuation pond, lighting and laying of 2 temporary cable circuits for the construction and commissioning period connection the existing AIS building to the new GIS switchboard building and all other associated site excavation, raising of site levels, infrastructural and site development works above and below ground. Planning permission is sought for a period of 10 years. A Natura Impact (NIS) was submitted with the application

2.2. Relevant Planning Authority Reports

- 2.2.1. **Planning Report:** notes that the development “would be considered a public service installation as per definition in development plan appendix”. Following the submission of further information, recommendation to grant permission subject to conditions.

2.3. Decision

- 2.3.1. On the 29th November 2023, Dublin City Council issued a notification of their intention to grant permission subject to ten conditions. Of relevance to the subject appeal is condition no. 2:

- 2: A development contribution in the sum of €659,178.80 shall be paid to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Council’s Section 48 Development Contribution Scheme. The contribution is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contribution Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.

3.0 Planning History

- 3.1.1. **ABP-314767-22:** SID Pre-Application Consultation under S.182E for a development described as comprising the following elements: A new 220kV Gas Insulated Switchgear (GIS) building (1600-sq.m. and 15m high), Replacement of 3 no. existing

Statcom reactors on southern substation boundary and other outdoor reactors, including two to the north of the existing AIS, 4 no. lightning protection masts, Associated provision, removal or alteration of cables and ducting, Associated compound and hardstanding, etc and Ancillary works

- 3.1.2. The Board decided that the proposed development did not fall within the scope of s182A of the Planning and Development Act 2000, as amended and that the planning application should be made to Dublin City Council in the first instance.

4.0 Policy Context

4.1. Planning and Development Act 2000, as amended

- 4.1.1. Section 48 of the Planning and Development Act 2000, as amended provides as follows:

48.—(1) A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

(2) (a) Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

Section 48(10) provides:

(10) (a) Subject to paragraph (b), no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.

(b) An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

(c) Notwithstanding section 34(11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal. provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

4.2. Dublin City Development s48 Development Contribution Scheme 2023-2026

4.2.1. The Dublin City Council Development Contribution Scheme 2023 – 2026, (under Section 48, Planning & Development Act, 2000 as amended) provides for

1. Sub-section (1) of Section 48 of the Planning and Development Act 2000 as amended, enables a planning authority, when granting a planning permission under Section 34 of the Act, to include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in

the area of the planning authority, and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

2 (a) Subsection (2) of Section 48 requires that the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

4.2.2. Section 9 of the scheme provides the level of contribution payable.

Class of Public Infrastructural Development	€ per square metre of Residential Development	€ per square metre of Industrial/ Commercial Development
Class 1: Roads infrastructure & facilities	€34.40	€35.85
Class 2: Drainage (surface water/flooding) infrastructure & facilities	€5.70	€5.93
Class 3: Parks and open space facilities	€19.01	€19.81
Class 4: Community facilities & amenities	€25.00	€26.05
Class 5: Urban regeneration facilities & amenities	€29.71	€30.96
Total of Contributions Payable	€113.82	€118.60

5.0 The Appeal

5.1. Grounds of Appeal

5.1.1. EirGrid have appealed the application of the section 48 development contribution scheme as it pertains to condition no. 2 of the Planning Authority decision to grant permission. The grounds of the appeal can be summarised as follows:

- EirGrid requested the City Council to review the development contribution but have not received a response.
- The Planning Authority record of section 48 development contribution sheet sets out the basis for the contribution as follows: based on gross floor area (GFA)

	Rate psq.m.	Proposed sq.m.	Granted sq.m.	Con. area sq.m.	Total €
Commercial / retail development.	€118.60	5558	5558	5558	€659,178.80

- The appellant queries whether the terms of the scheme are applicable to the subject public utility development. The proposed development is clearly not a class or type of development specified under the scheme.
- Poolbeg substation is one element of a long established public utility development. The proposed development entirely comprises public utility infrastructure, with no commercial, retail or industrial element or use having regard to the land use definitions in the development plan and the Act (appendix C). The building is simply enclosing gas-insulated electrical switchgear and associated plant an apparatus.
- The proposed development comprises ‘electricity transmission infrastructure’ as per subsection 182A(9) of the Act and construed with reference to the definition for ‘transmission’ and ‘electrical plant’ in section 2(1) of the Electricity Regulation Act 1999.
- The proposed development was confirmed to comprise electricity transmission under ABP-314767-22.
- The Dublin City Council development plan does not include a definition or land use definition for transmission infrastructure. The planners report identifies the proposed development as a ‘public service installation’ which is defined in the development plan as including “*all service installations necessary for electricity....*”
- Further, the provision of strategic transmission infrastructure is a planning gain as envisaged by the scheme in that it is ‘public infrastructure and facilities benefitting development in the administrative area of the Local Authority’, albeit provided by a statutory undertaker and not Dublin City Council itself.

- It is submitted that applying a financial contribution to fund public infrastructure is incongruous.
- New build transmission infrastructure including substations or substation extensions consented through the SID process do not require payment of a financial contribution. It is anomalous that the redevelopment of an existing substation requires a contribution because it was sought under section 34 of the Act.
- Financial contributions have not been applied in respect of similar GIS substations – F23A/0040.
- The appeal concludes by stating that the nature of the proposed development as public utility electricity transmission infrastructure comes under the definition of a ‘public service installation’ as defined in the development plan and that this is not a class or type of development specifically covered by the development contribution scheme. It is stated that the Planning Authority has incorrectly considered the proposal to comprise commercial / retail / industrial use. The Board is requested to remove condition no. 2 entirely.

5.2. Planning Authority Response

- 5.2.1. The request that the board uphold their decision. Having reviewed the appeal, they conclude that the development contribution was applied correctly. Dublin City Council’s position is that the provision of electricity supply to an end user is a commercial operation and as such the correct rate was applied and that the development contribution scheme was applied correctly.

6.0 Assessment

- 6.1.1. I note that ABP-24/60494 is currently before the Board under a similar appeal as the subject appeal.
- 6.1.2. Having regard to the provisions of section 48(13)(a) of the Planning and Development Act 2000 as amended, this assessment and recommendation will only relate to the conditions that are subject of the appeal.
- 6.1.3. As noted above, condition no. 2 requires a payment of €659,178.80 as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning

Authority in respect of public infrastructure and facilities. The appellant states that the proposed development is not a class or type of development to which the development contribution scheme applies and therefore no development contribution levies arise.

- 6.1.4. The appellant puts forward considerations for this argument. The first is that the subject development is public utility infrastructure, with no commercial, retail or industrial element or use. The appellant notes that the planning report of the Planning Authority refers to the development as being a public service installation and that this is correct having regard to the definition of 'public service installation' in appendix 15 of the development plan. With regard to the classification of the development as electricity transmission infrastructure, the appellant states that that the SID pre-application for the development (ABP-314767-22) refers to the development as electricity transmission infrastructure and that this is supported by the definition of same in subsection 182A(9) of the Planning and Development Act 2000, as amended and section 2(1) of the Electricity Regulation Act 1999.
- 6.1.5. Section 182A(0) of the Planning and Development Act 2000, as amended, defines "transmission", in relation to electricity, shall be construed in accordance with section 2(1) of the Electricity Regulation Act 1999 but, for the purposes of this section, the foregoing expression, in relation to electricity, shall also be construed as meaning the transport of electricity by means of- (a) a high voltage line where the voltage would be 110 kilovolts or more, or (b) an interconnector, whether ownership of the interconnector will be vested in the undertaker or not. The appellant notes that this definition was accepted by the Board when considering ABP-314767-22. Another
- 6.1.6. Notwithstanding that all of these arguments can be true, the fact remains that under section 9 of the scheme, development is separated into only two categories: residential and industrial / commercial. The two categories are not an exhaustive list, only that development is one *or* the other. The only difference between the two categories is the total contribution payable. The subject development can be both a public service utility and an industrial development, in the ordinarily understood definition of the word industry. The applicant is not a statutory undertaker as per the definition in the Planning and Development Act 2000, as amended. There is no exemption in the scheme for a public utility.

- 6.1.7. Section 10 of the scheme provides a list of development categories where no or a reduced contribution applies. The subject proposal does not fall under any of the section 10 categories and therefore there is no exemption for the proposed development under section 10 of the scheme.
- 6.1.8. Regarding the definition of public service installation in the development plan, as noted by the appellant this definition applies to statutory undertakers, which the appellant is not. Further, as stated above, there is no exemption for a public service installation in the scheme.
- 6.1.9. The appellants argument that it would not be required to pay a financial contribution had the subjects development been considered to be a SID under ABP-314767-22 is not relevant to the subject appeal. Section 8 of the development contribution scheme provides that Dublin City Council when granting permission under section 34 of the Act (as is the subject case) will include conditions requiring the payment of a contribution.
- 6.1.10. I note that the Board applied a development contribution levy to ABP-313757-22 and ABP-314972-22, albeit to developments that comprise a HISC compound as well as GIS switchgear compound. I note that ABP-320789-24 is currently before the Board under a similar appeal as the subject appeal.
- 6.1.11. I am satisfied that the Planning Authority has correctly applied the terms of the Dublin City Council Contribution Scheme 2023-2026 as provided for under Section 48, Planning & Development Act, 2000, (as amended).

7.0 Recommendation

- 7.1.1. Attach condition no. 2 as follows:

2: A development contribution in the sum of €659,178.80 shall be paid to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contribution Scheme. The contribution is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contribution

Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.

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.

Gillian Kane
Senior Planning Inspector

19 November 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	Construction of Gas Insulated Switchgear (GIS) switchboard building with all associated site works. Removal of reactors and extension. Natura Impact Statement submitted to planning authority.		
Development Address	Poolbeg 220kV Electrical Substation and adjacent land, Pigeon House Road, Dublin 4 on site measuring 3.6ha.		
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	

Inspector: _____

Date: November 19, 2024