



An
Bord
Pleanála

Inspector's Report ABP 319370-24

Question

Whether the laying of a 20kV underground electricity cable and associated joint bays and communications chambers in the public road (R708) from the permitted Keiloge Solar Park to the existing Kilcarragh substation (38kV) is or is not development and is or is not exempted development.

Location

Keiloge and Monamintra Tds. Co.
Waterford

Declaration

Planning Authority

Waterford City and County Council

Planning Authority Reg. Ref.

DS202328

Applicant for Declaration

Keiloge Solar Limited

Planning Authority Decision

Is development and is not exempted
development

Referral

Referred by

Keiloge Solar Limited

Observer(s)

None

Date of Site Inspection

01/04/25

Inspector

Pauline Fitzpatrick

1.0 Site Location and Description

- 1.1. The proposed grid connection works of c.1.4km in length are along regional road R708 and local road L4066 connecting the permitted Keiloge Solar Park to the existing Kilcarragh 38kV substation. The route is located c. 5km to the southeast of Waterford city centre and c.6km to the northeast of Tramore. The grid connection will be located within the public roads and road verge.

2.0 The Question

The question subject of the referral is:

- 2.1. Whether the development of 20kV underground grid connection is or is not exempted development. The proposed development consists of the laying of 20kV underground electricity transmission cables and associated joint bays and communications chambers in the public road (R708) from the permitted Keiloge Solar Park (PL Ref 17/113) to the existing Kilcarragh substation (38kV). The proposed cable route is c.1.4km in length and runs through the townlands of Keiloge and Monamintra.
- 2.2. In the interests of clarity I propose to reword the question before the Board as follows

Whether the development of a 20kV underground grid connection to connect the permitted Keiloge Solar farm to the existing 38kV Kilcarragh substation is or is not development and is or is not exempted development.

- 2.3. **Note:** The Board is advised that consequent to its receipt of the referral the applicant sought and has secured planning permission from Waterford City and County Council for the works subject of the referral (planning ref. 24/60522). The nature and extent of the development subject of the permission is set out in section 4 below.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority determined that:

- (a) the said works come within the scope of Sections 2(1) and 3(1) of the Act and constitutes development,
- (b) the said works come within the scope of Class 26, Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended,
- (c) the said works do not come within the scope of Section 4(4) of the Planning and Development Act, 2000, as amended,
- (d) the said works come within the scope of Article 9(1)(a)(iii) of the Planning and Development Regulations, 2001, as amended. As currently presented it is considered that the works would endanger public safety by reason of traffic hazard or obstruction of road users.

It is declared that the said development constitutes development which is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Report

The report can be summarised as follows:

- The underground cable comprises works and development as per sections 2(1) and 3(1) of the Act.
- The works come within the meaning of Class 26, Part 1, Schedule 2 of the Regulations.
- In terms of Article 9 subsection (iii) is applicable. The development will be subject to a road opening licence and a CEMP and Traffic Management Plan. These have not been outlined in the submitted documents.
- As currently presented it is considered that the works would endanger public safety by reason of traffic hazard or obstruction of road users. Therefore, the works are development and not exempted development.
- Council's Heritage Officer has assessed the AA Screening report and concurs with the finding of no potential for significant effects on the conservation objectives of the QIs of the Natura 2000 network.

3.2.2. Other Technical Reports

Heritage Officer concurs with the finds of no potential for significant effects on the conservation objectives of QIs of the Natura 2000 network. This is based on the absence of a physical or hydrological link. The distance between the proposed grid connection site and the designated sites negates any potential for significant effect and thus impact on the Natura 2000 network is not a consideration in the exemption/de-exemption of the proposed development.

4.0 Planning History

PL93.248487 – permission granted on appeal on 12/03/2018 for a solar farm, 2 substations and ancillary works on a site with a stated site area of 17.701 ha. at Keiloge Td.

24/60467 – permission granted on 21/11/24 for modifications to the permitted solar farm comprising of amendment to the design and layout of the permitted on-site 20kV substation.

24/60522 – permission granted on 16/12/24 for the laying of 20kV underground electricity transmission cables (c.1.7 km in length) and associated joint bays and communications chambers in the public roads, the R708 (Airport Road) and L4066 (Kilcarragh Road) from the permitted Keiloge Solar Farm (PI ref 17/113) to the existing Kilcarragh 38kV substation in the townlands of Keiloge and Monamintra.

5.0 Policy Context

5.1. Development Plan

Waterford City and County Development Plan 2022-2028

The site is located in a rural, unzoned part of County Waterford.

5.2. Natural Heritage Designations

The nearest designated sites are:

- Lower River Suir SAC c. 4km to the north

- Tramore Dunes and Backstrand SAC c. 4.3km to the south
- River Barrow and River Nore SAC c. 6.5km to the east

6.0 The Referral

6.1. Referrer's Case

The submission by MKO on behalf of the referrer, Keiloge Solar Ltd. can be summarised as follows:

- The works fall within the meaning of Class 26, Part 1 Schedule 2 of the Planning and Development Regulations, as amended.
- The works are carried out by a statutory undertaker. In the Electricity Regulation Act 1999 'electricity undertaking' means any person engaged in generation, transmission, distribution or supply of electricity including any holder of a licence or authorisation under this act or any person who has been granted a permit under section 37 of the Principal Act'.
- The works are not works which are subject to appropriate assessment and therefore are not works to which Section 4(4) applies.
- The works require a Road Opening Licence. An application for a licence from the Roads Authority must be in accordance with the 'Guidelines for Managing Openings in Public Roads' prepared by the Department of Transport, Tourism and Sport. Section 3.4 of the guidelines requires that a Temporary Traffic Management Plan is prepared in agreement with the Planning Authority at the licencing stage. Therefore, it can be concluded that in order to obtain a Road Opening Licence a Traffic Management Plan will be agreed with the planning authority. It can also be assumed that should the traffic management plan be inadequate or should the works themselves pose a threat to public safety that a Road Opening Licence would not be issued. Reference made to Section 8.4.9 of the inspector's report on file ref. ABP 310120-32.

The request is accompanied by an Appropriate Assessment Screening Report

6.2. Planning Authority Response

None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1)

works are defined as any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

statutory undertaker means 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

(c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

Section 3 (1) Development means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structure or other land.

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act and includes:

(g) development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose.

Section 4(4) - Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and 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

Article 6 (1) - 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.

The following classes of development are listed:

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.

Article 9(1)(a) sets out restrictions on exemptions for development to which Article 6 relates. The following sub-articles are listed:

(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.

(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.

7.3. Other

Electricity Regulation Act 1999

Section 2(1) 'electricity undertaking' means any person engaged in generation, transmission, distribution or supply of electricity, including any holder of a licence or authorisation under this Act, or any person who has been granted a permit under section 37 of the Principal Act.

7.4. Precedent

A material number of comparable referrals have been adjudicated upon by the Board. The following recent decisions are noted:

File Ref.	Development	Decision	Date of Decision
ABP 313557- 22	Underground 10kV grid connection to connect a permitted solar farm substation to existing 38kV Castlerea Station, Co. Roscommon	Is development and is exempted development	19/10/23
ABP 310120-21	38kv underground grid connection cable between the consented Cleggill Solar Farm to 38kV Longford substation.	Is development and is exempted development	05/10/21
ABP 308071-20	Underground cables from Mauricetown Windfarm, Ashford, Ballagh, Co. Limerick to the substation at Dromdeeveen	Is development and is exempted development	31/03/21
ABP 307927-20	underground grid connection within the corridor of public roads and private lands linking a permitted solar farm at Walshestown, Mullingar, County Westmeath to the existing ESB Mullingar 110kV substation at Irishtown, Mullingar, County Westmeath.	Is development and is exempted development	09/04/21

ABP 307454-20	Underground 20 kV cable within the public road between a permitted solar farm and a 38 kV substation at Creevyquin, Co. Roscommon.	Is development and is exempted development	29/01/21
ABP 302895-18	20kV underground grid connection between a permitted solar farm at Dysart, Johnstownbridge, Co Kildare and the Dunfirth ESB substation, Johnstownbridge, Co. Kildare	Is development and is exempted development.	12/03/19

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The proposal entailing the provision of a c.1.4km underground grid connection along public roads connecting a substation which is part of the permitted Keiloge solar farm (granted permission on appeal under ref. PL93.248487 (17/113)) to the 38kV Kilcarragh substation constitutes *works* as defined in section 2(1) of the Planning and Development Act, 2000, as amended, and comes within the definition of *development* as set out in section 3(1) of the said Act.

8.2. Is or is not exempted development

- 8.2.1. Class 26, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, provides that the carrying out by any undertaker authorised to provide an electricity service or development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking is exempted development.
- 8.2.2. I note that 'any undertaker authorised' is not, of itself, defined. I have regard to the definition of 'Statutory Undertaker' in section 2 of the Act as set out in section 7.1

above and to the definition of '*electricity undertaking*' as set out in Section 2(1) of the Electricity Regulation Act set out in section 7.3. I consider that the applicant, Keiloge Solar Limited, falls under the category 'any undertaker authorised' in view of the fact that it currently has planning permission under section 34 of the Act for the development related to the provision of electricity, namely the construction of a solar farm.

8.2.3. In this context I refer the Board to the precedent cases as summarised in section 7.3 in which it determined that the applicants granted permission for an electricity generating development fall within the scope of Class 26.

8.2.4. In view of the above I am satisfied that the development falls within the scope of Class 26.

8.3. Restrictions on exempted development

8.3.1. There are no conditions or limitations attached to Class 26.

8.3.2. Section 4(4) of the Act precludes development being exempted development where an EIA or AA of the development is required. In this regard neither the proposed development nor the solar farm which it is to serve fall within a class of development for the purposes of EIA with reference to Schedule 5 of the Planning and Development Regulations, 2001, as amended. I am satisfied that the provisions of Section (4)(4) with regard to EIA do not apply in this case. The matter of AA is addressed below under Article (9)(1)(viiB).

8.3.3. Article 9(1) of the Planning and Development Regulations, 2001, as amended, details prescribed circumstances which would render a development not to be exempted development.

8.3.4. I consider that clauses (iii), (v) and (viiB), only, are relevant to the referral.

(iii) Traffic Hazard or Obstruction of Road Users

8.3.5. The planning authority's section 5 declaration is grounded in the view that the works would endanger public safety by reason of traffic hazard or obstruction of road users. As extrapolated from the planning report supporting the declaration the development will be subject to a road opening licence which would be required to include a CEMP and Traffic Management Plan. In the absence of these plans the Planning Officer

considered that the possibility of the proposed development endangering public safety by reason of traffic hazard or obstruction of road users could not be ruled out.

As noted a road opening licence will be required to implement the development and Waterford City and County Council in exercising its functions as the Roads Authority can attach conditions to control the works as it considers appropriate and which can include the implementation of a traffic management plan for the duration of the construction works. As noted the development relates to an underground cable which of itself, when in place, would not endanger public safety by reason of traffic hazard or obstruction of road users.

On this basis I submit that the restrictions to exempted development as set out in Article 9(1)(iii) are not applicable to the development in question.

(v) 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 26 applies.

The works entail the laying of an electricity cable connecting the permitted solar farm to the existing substation and are works to which class 26 pertains as detailed above.

On this basis I submit that the restrictions to exempted development as set out in Article 9(1)(v) are not applicable to the development in question.

(viiB) Appropriate Assessment

The referral is accompanied by an Appropriate Assessment Screening Report.

The site is not located within or adjacent to any designated European Site, the closest being Lower River Suir SAC c. 4km to the north with Tramore Dunes and Backstrand SAC c.4.3km to the south and the River Barrow and River Nore SAC c. 6.5 km to the east. The proposed undergrounding works are minor in nature and extent, are entirely within the public road corridors and/or grass verges and do not entail any water crossings, with none noted in the vicinity of the works corridor. I am therefore satisfied 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 an appropriate assessment.

On this basis I submit that the restrictions to exempted development as set out in Article 9(1)(viiB) are not applicable to the development in question.

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 the development of a 20kV underground grid connection to connect the permitted Keiloge Solar farm to the existing 38kV Kilcarragh substation is or is not development and is or is not exempted development.

AND WHEREAS MKO, 9C Beckett Way, Parkwest Business Park, D12XN9W on behalf of Keiloge Solar Limited requested a declaration on this question from Waterford City and County Council and the Council issued a declaration on the 22nd day of February, 2024 stating that the matter was development and was not exempted development:

AND WHEREAS MKO referred this declaration for review to An Bord Pleanála on the 20th day of March, 2024:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

- (d) Class 26 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (e) the planning history of the site.

AND WHEREAS An Bord Pleanála has concluded that

- (a) the provision of a 20kV underground grid connection to connect the permitted Keiloge Solar farm to the existing 38kV Kilcarragh substation constitutes development as defined under Sections 2 and 3 of the Planning and Development Act 2000, as amended, and
- (b) the works come within the scope of the exempted development provision provided at Class 26 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (c) none of the restrictions on exempted development provided for under article 9(1)(a) of the Planning and Development Regulations, 2001, as amended, apply in this case.

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 the development of a 20kV underground grid connection to connect the permitted Keiloge Solar farm to the existing 38kV Kilcarragh 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.

Pauline Fitzpatrick
Senior Planning Inspector

April, 2025