



An
Bord
Pleanála

Inspector's Report

ABP-320789-24

Development

Construction of two Gas Insulated Switchgear (GIS) buildings and all ancillary works including associated temporary works at construction stage. Planning permission is sought for a period of 10 years. Natura Impact Statement submitted with the application.

Location

Maynooth 220kV Substation, Taghadoo and Windgates, Maynooth, Co. Kildare.

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

2460494

Applicant(s)

EirGrid

Type of Application

Permission

Planning Authority Decision

Grant permission

Type of Appeal

First Party against condition

Appellant(s)

EirGrid

Observer(s)

None

Date of Site Inspection

No site inspection

Inspector

Emer Doyle

1.0 Site Location and Description

- 1.1. The existing Maynooth 220 /110 kV Station is located in the townlands of Taghadoo and Windgates, Co. Kildare, approximately 4km west of Celbridge and 3.5km south of Maynooth. This large substation site is bounded by the R406 to the east and local road (L5037) to the north. The local road provides vehicular access to the station. Surrounding lands are in agricultural use, with some rural housing in the area. Lands to the south of the existing compound are generally level and bounded by mature hedgerows and trees.

2.0 Proposed Development

- 2.1. As described in the public notices, the proposed development can be summarised as follows:

EirGrid plc, with the consent and approval of the ESB, intend to apply for permission for substation and associated development at Maynooth 200kV/ 110kV Substation and adjacent undeveloped lands on a site measuring 20.3 hectares. The proposed development is to replace the existing substation with a new 220/110kV substation constructed in the land to the immediate south of the existing substation. Permission is sought for a permission of 10 years.

The development will consist of the following:

- Two Gas Insulated Switchgear (GIS) buildings.
- Both buildings will have 8 No. associated lighting protection spikes/ rods on each of the roofs 3m in height.
- 4 No. 220/100kV power transformers.
- 2 No. cable interface towers and associated removal of 2 No. existing end masts and overhead line and cable works.
- 3 No. lighting masts (height 22m).
- Cable connections to GIS buildings.
- New 4.5m wide internal access road and 10 No. permanent parking spaces.

- Demolition of existing bungalow farmhouse and agricultural buildings to facilitate the proposed development.
- Associated site works and temporary construction works.
- A Natura Impact Statement accompanied the application.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 19 No. Conditions. The only condition relevant to this appeal is Condition 19 as follows:

19. The Applicant/Developer to pay to Kildare County Council the sum of **€476,550.00** being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 34 of the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Uisce Éireann.

Reason: It is considered reasonable that the Developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planning authority considered that the proposal was acceptable in terms of design, appearance, and compliance with the listed policy.

3.2.2. Other Technical Reports

- Development Contribution Calculation Report as follows:

DEVELOPMENT CONTRIBUTIONS - 2460494 - Eirgrid PLC
Development at Substation Taghadoo and Windgates, Co. Kildare

Electricity Substation

Rate Bands	Description	Rate Per Hectare/sqm	*Exemption Reduction	Area Considered for Contribution hectare	Contribution
8.5	Open Miscellaneous	€15,000 per ha	0	20.3	€304,500.00
8.2	220 kV GIS Building	€62.00	0	1637	€101,494.00
8.2	110 kV GIS Building	€62.00	0	1138	€70,556.00
				Development Contributions Applicable	€476,550.00

Section 8.5 of the Development Contribution Scheme 2023 -2029 refers: "all other development, not covered elsewhere in the scheme shall be charged at the following rates. Open €15,000 per hectare.
Buildings as per Section 8.2 of the Development Contribution Scheme 2023-2029, please note that there are no allowances for demolition under the current scheme.

Signed: Celine O'Neill

Date: 14th August, 2024

4.0 Planning History

4.1. ABP-313964-22:

SID Pre-Application Consultation under S.182E for the re-development of the existing Maynooth 220kV/100kV electrical substation development in the townlands of Taghadoo and Windgates, Co. Kildare. 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 the relevant planning authority in the first instance.

5.0 Policy Context

5.1. Planning and Development Act 2000, as amended

5.1.1. 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.

5.2. Kildare County Council Development Contributions Scheme 2023-2029

Section 7.2 identifies that the area of calculation in respect of buildings for the purposes of the scheme shall be the gross floor area.

Section 8 Level of Contribution- The following sections set out the development contribution applicable on planning permissions granted from the date of the adoption of this Scheme:

8.1 Residential Development

8.2 Non Residential Development (e.g. Commercial/ Retail/ Warehousing)

8.3 Agriculture/ Equine/ Horticulture

8.4 Advertising Structures

8.5 Miscellaneous- All other development not covered elsewhere in the Scheme shall be charged at the following rates:

Built: 30 per square metre

Open 15,000 per hectare

Open development includes development not covered elsewhere in the Scheme which involves the carrying out of works on, in, over or under any land or the making

of any material changes in the use of land for example, hardstanding, carparking, surface storage, motor/garage forecourts.

8.6 Car-Parking Shortfall

Section 10 outlines categories of exemptions / reduced contributions as follows:

10.1 Temporary Permission

10.2 Protected Structures

10.3 Supporting Town and Village Centre Development

10.4 Supporting Small Enterprise and Job Creation

10.5 Telecommunications

10.6 Change of Use

10.7 Voluntary, Community, Health, and Education

10.8 Social Housing

10.9 Housing Adaptation Grants

10.10 Replacement Buildings on the same footprint or same area following extensive damage by subsidence, flood or fire.

10.11 Chief Executive- The Chief Executive shall have the discretion to reduce or waive development contributions where, in his or her opinion, it is warranted, having regard to National Policy in relation to specific classes of development, the particular economic, social or cultural benefits of the development or other exceptional circumstances.

Section 11 outlines that special development contributions can be implemented where exceptional costs are incurred by the Council in the provision of specific public infrastructure or facility.

Section 12 outlines that appeals can be made to the Board in accordance with Section 48 (10) of the Act.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. EirGrid have appealed solely the Section 48 Development Contribution- Condition 19.

- It is stated that *‘the important point is that the proposed development comprises public utility infrastructure, with associated and ancillary infrastructure. The proposed development has no other commercial, retail or industrial element or use. It will ultimately ensure the continuation and enhancement of State-owned infrastructure in this area of Kildare.’*
- It is queried whether the terms of the Contribution Scheme are applicable to the subject public utility development. The application of a financial contribution to fund public infrastructure is incongruous.
- New build transmission infrastructure consented through the SID process do not require financial contributions. It is considered anomalous that the redevelopment of an existing substation requires payment of a financial contribution.
- Financial contributions have not been required in similar circumstances- F23A/0040 granted in Fingal County Council.
- The nature of the development, as public utility electricity transmission infrastructure comes under the umbrella definition of a public utility, and this is not a class or type of development specifically covered by the Contributions Scheme.
- The Board is requested to remove condition 19 in its entirety.
- The proposed development was confirmed to comprise ‘electricity transmission infrastructure’ as per subsection 182E of the Act (as amended) under ABP case 313964, albeit that the planning application was to be submitted to Kildare County Council.

6.2. Planning Authority Response

- The Development Contribution was calculated in accordance with Kildare County Council's Development Contribution Scheme 2023-2029.
- The appellant states that the development is neither commercial, retail or industrial. This is not relevant as contributions were calculated in accordance with Section 8.2 (non-residential development) and Section 8.5 (miscellaneous).
- The calculations were applied in accordance with the requirements of Section 8.2 (1,637 and 1,138 square metres @ €62psm for buildings) and 20.3 HA @ €15,000 per hectare for other development not covered elsewhere by the scheme).

6.3. Further Responses

A response submitted on behalf of the applicant can be summarised as follows:

- Section 48 provides that a planning authority may include conditions of a permission 'for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority.' However, in this instance, ABP will understand that the proposed development itself is 'public infrastructure and facilities benefiting development in the area of the planning authority.'
- The proposed development is of strategic importance to the State and to the county and whilst the Board has previously decided that it is not strategic infrastructure, this in no way diminishes the strategic importance of the proposed infrastructure facilities.
- The calculations in relation to the contribution required by Section 8.5 are incorrect. The calculable area should only be 0.76 hectares having regard to the portion of the site that is to be developed.

7.0 Assessment

- 7.1. This is a first party appeal against planning condition 19 which requires a development contribution in line with section 48 of the Planning and Development Act 2000 (as amended) respectively.
- 7.2. Section 48(10) (b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority. I note that the Board in considering the appeal is required by the provisions of the legislation to apply the scheme as adopted by the Planning Authority. The Board have no legal jurisdiction to interpret or evaluate the merits of any financial contribution scheme as adopted by the Planning Authority. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal, which is whether the terms of the Scheme have been properly applied.

Has the Development Contributions Scheme been appropriately applied?

- 7.3. The main case made on behalf of the applicant is that under Section 48 of the Planning and Development Act (as amended), a planning authority may 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, however in this case, the proposed development is public infrastructure and facilities benefiting development in the area of the planning authority. The Board is requested to consider whether the Section 48 scheme should apply in this instance to this proposed strategic infrastructure development of strategic importance to the State and to the County. Whilst the Board has previously decided that the proposed development is not Strategic Infrastructure Development (per S182 A of the Planning and Development Act 2000 as amended), this in no way diminishes the strategic importance of the proposed public infrastructure facilities and its significant benefit to the County.

- 7.4. I note that in a similar case under ABP 318795-24, the Board considered that the terms of the Development Contribution Scheme had not been properly applied and directed Dublin City Council to remove the development contribution condition.
- 7.5. In terms of the application of the Development Contributions Scheme, Kildare County Council used Section 8.2 for the contribution for the 2 No. Gas Insulated Switchgear buildings and the miscellaneous category set out in Section 8.5 for the complete area of the stated site of 20.3 HA.

8.2 Non-residential Development (e.g. Commercial / Retail Development / Warehousing)

The development contribution rate shall be **€62** per square metre.

8.5 Miscellaneous

All other development, not covered elsewhere in the Scheme shall be charged at the following rates.

Built: €30 per square metre

Open : €15,000 per hectare

Built development refers to development not covered elsewhere in the Scheme for example covered areas.

Open development includes development not included elsewhere in the Scheme which involves the carrying out of works on, in, over or under any land or the making of any material changes in the use of land for example, hard standing, carparking, surface storage, motor/garage forecourts.

- 7.6. The area of calculation for the buildings is the gross floor area as set out in Section 7.2 of the Scheme and the applicant does not dispute the area calculated. The applicant does dispute the area calculated for the miscellaneous category as the applicant states that the calculable area should only be 0.76 hectares (excluding area of road, temporary construction parking, replacement diversion cables etc.). There is no specific guidance set out in the Development Contributions Scheme in terms of what area should be included in this calculation and therefore if the Board is minded to include a development contribution, in my view, the Board must adhere to the terms set out in the scheme and it is not a matter for interpretation. As such, I consider that the relevant rate set out in the scheme is 'Open: €15,000 per hectare)

and the whole site area should be included as per the calculation set out by Kildare County Council.

7.7. Notwithstanding this, I consider that the type of development proposed, comprising electricity transmission infrastructure, is not of a class or description that is specified in the adopted Kildare County Council Development Contributions Scheme 2023-2029, which under Section 48 (2) (a) is the basis for the determination of any contribution. The Planning Authority applied Section 8.2 (non-residential) to the buildings proposed and Section 8.5 'miscellaneous' to the site area. I am satisfied that the use proposed as electricity transmission infrastructure is not in accordance with the examples outlined for this category as commercial/ retail development or warehousing. I am aware that this category could include many more examples of development otherwise not specifically set out in the scheme, however, I do not consider that electricity transmission infrastructure could reasonably be included to be in the same category as the examples outlined by the Council in the scheme having regard to the nature of the development. I note that open development as set out in Section 8.5 of the scheme includes development not covered elsewhere in the Scheme which involves the carrying out of works on, in, over or under any land or the making of any material changes in the use of land for example, hard standing, carparking, surface storage, motor/ garage forecourts. As set out in the application particulars, the applicant has identified the need to undertake large scale asset replacement at this location. The application details outline that the proposed development is essential to ensure a more secure supply of electricity for Co. Kildare and to enable the integration of renewable energy in line with government policy targets. Having regard to the nature of the development, I do not consider that it could be reasonably interpreted to be in a similar category as the examples set out in the scheme as car parking, surface storage or motor garage forecourts. Having regard to the nature of the development, I do not consider that the use of 'non residential' and 'miscellaneous' categories are appropriate.

7.8. I have examined all the categories of development set out in the scheme and do not consider that the proposed development fits into any of the categories of development outlined in the scheme. I have also examined the categories of exemptions/ reduced contributions set out in Section 10 of the scheme and do not consider that any of the categories are relevant having regard to my finding as set

out above that the development does not fit into any category or description of development in the development contribution scheme. As such, the matter of exemption, or a reduced contribution does not arise.

- 7.9. The intention of a Section 48 development contribution scheme is that, when prepared and adopted, there is clarity and certainty for the planning authority and any applicant/developer of the classes or descriptions of development that fall within any such scheme, in addition to the level of contribution payable. I do not consider that there is clarity in this instance having regard to the nature of the use and the categories and descriptions of development outlined in the Development Contribution Scheme.
- 7.10. In conclusion, I am not satisfied that the development, comprising electricity transmission infrastructure, is of a category or description of development specified within the Kildare County Council Development Contributions Scheme 2023-2029 to justify the application of a section 48 contribution, therefore I recommend that condition No. 19 is removed.

8.0 Recommendation

- 8.1. It is recommended that condition 19 is **REMOVED**.

9.0 Reasons and Considerations

The Board, in accordance with section 48 of the Planning and Development Act 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition number 19 and directs the said Council to **REMOVE** Condition number 19.

It is considered based on the information on file, including the description of the proposed development set out in the public notices and the submitted drawings and particulars and, based on the submissions received from the first party and the planning authority, that the development, comprising electricity transmission infrastructure, is not a category or description of development that is specified in the

adopted Kildare County Council Development Contribution Scheme 2023-2029, which under Section 48(2)(a) is the basis for the determination of any contribution. The Board did not consider it reasonable to apply a development contribution to the proposed development based on the categories of 'non- residential development' or 'miscellaneous-open'. Overall, the Board was satisfied that the development, comprising electricity transmission infrastructure, is not of a category or description of development specified within the adopted Kildare County Council Development Contributions Scheme 2023-2030 and Condition 19 should, therefore, be **REMOVED.**

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.

Emer Doyle
Planning Inspector

27th March 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	320789-24		
Proposed Development Summary	Section 48 appeal only in relation to Condition No. 19.		
Development Address	Maynooth, Co. Kildare.		
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)			Tick if relevant and proceed to Q2.
		No	Tick if relevant. 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)?			
Yes	Tick/or leave blank	State the Class here.	Proceed to Q3.
No	Tick or leave blank		Tick if relevant. No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required

No	Tick/or leave blank		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	Tick/or leave blank	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes	Tick/or leave blank	Screening Determination required

Inspector: _____ Date: _____