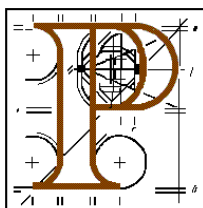


An Bord Pleanála



Inspector's Report

REFERRALS

An Bord Pleanála Refs:	RL3369 and RL3375
Planning Authorities:	Cavan County Council and Meath County Council.
Planning Authority Refs:	Cavan Co. Co. (none) Meath Co. Co. KA/S51520.
Referrers:	Cavan County Council and Meath County Council
Developer:	Raragh Developments Limited
Location of Referral Site:	Kingscourt, County Cavan and Kilnalun, County Meath.
Question:	Whether the provision of a 20kV underground cable forming the grid connection to a planned windfarm is or is not development or is or is not exempted development.
Date of Inspection:	20 November, 2015.
INSPECTOR:	Brendan Wyse

1.0 INTRODUCTION

- 1.1 As these two referrals relate to the same proposal, the provision of an underground electricity cable that straddles both County Cavan and County Meath, and to the same question, the matter can be properly dealt with in a single Inspector's report. A copy of the report is attached to each file.
- 1.2 The Board should also note that the following similar referrals (post O'Grianna grid connections) are also current – RL3377, RL3401 (Counties Kilkenny/Tipperary).

2.0 THE SITE (see Map and Photographs)

- 2.1 The site is located in the vicinity of Kingscourt in County Cavan. Comprising the route of the proposed electricity line it extends north-south for approximately 5.5 kilometres from the townland of Raragh, north of Kingscourt, the location of the planned wind farm, via the centre of Kingscourt to the existing ESB substation at Kilnalun, south of Kingscourt and just over the county boundary in County Meath. The great majority of the route is in County Cavan with approximately 220 metres in County Meath.
- 2.2 From its northernmost point the route initially traverses farmland, including an old track and some grassland, before entering the R162. It follows this road southwards into Kingscourt and runs along Main Street. At the southern end of Main Street the route veers left and follows the Carrickleck Road southeast out of the town to the substation at Kilnalun.
- 2.3 Maps and photographs are included in the file pouch.

3.0 APPLICATION FOR DECLARATION

- 3.1 The application to Cavan County Council was lodged on 11th May, 2015. A request for further information issued on 6th June, 2015 referring to the O'Grianna court ruling and to the need to also submit an application to Meath County Council.
- 3.2 Further information was submitted to Cavan County Council on 1st July, 2015 and the application for a Declaration from Meath County Council was lodged on the same date.

3.3 The documentation submitted to both Planning Authorities is similar and comprises the following:

- Cover letters.
- Application forms.
- Development maps/drawings.
- AA Screening Report.
- Environmental Review.
- Archaeological Impact Assessment.
- Bat Survey Report.
- Letter from CER (Cavan County Council).
- Details of Precedent Cases.

3.4 The cover letters and maps/drawings include the following:

- The proposal is to construct 5.5 kilometres of 20kV underground cable as the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan (granted permission under Cavan County Council Ref. 09/270, ABP Ref. 02.236608) and the existing ESB substation in Kilnalun, County Meath.
- The cable will be installed under existing public roads (R162 and Carrickleck Road) and private land.
- A separate road opening licence will be obtained.
- The development will comprise a 20kV cable installed in a 125 millimetre HDPE duct at a depth of 1 metre below ground level.
- The development will be constructed by Raragh Developments Limited (RDL). Upon completion it will be handed over to ESB Networks who will own/maintain the constructed asset.
- With reference to Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, the development consisting of the laying of underground cables or other apparatus is considered exempted development.
- Under Section 16 of the Electricity Regulation Act 1999 (Authorisation to Construct) and Section 14 of the Electricity Regulation Act 1999 (Licence to Generate) the Commission grant the licence for an electrical undertaking to persons to construct a generating station and to generate electricity.

- Declarations are sought confirming the proposed development as exempt.

4.0 PLANNING AUTHORITY DECISIONS

It should be noted that neither Cavan County Council nor Meath County Council issued a Declaration. Instead they elected, under Section 5(4) Planning and Development Act 2000, as amended, to seek a determination on the matter from the Board.

5.0 REFERRALS TO THE BOARD

5.1 Cavan County Council (RL3369)

5.1.1 Report of A/Senior Planner, dated 5th June, 2015.

Recommends the further information request referred to at parag. 3.1 above.

5.1.2 Raragh Developments Limited (Developer) (received 14th August, 2015)

Includes:

- Copy Authorisation to Construct and Licence to Generate, which grant the electrical undertaking to Raragh Developments Limited, for the project in accordance with Sections 14 and 16 of the Electricity Regulation Act 1999, granted by the Commission for Energy Regulation (CER).
- Statement that these grant the licence for an electrical undertaking to Raragh Developments Limited for the purposes of constructing the wind farm and grid connection.
- In accordance with Class 26, Part 1, Schedule 2, Planning and Development Regulations 2001, as amended, these activities are considered exempted development to persons holding these licenses.

5.1.3 Raragh Developments Limited (received 9th October, 2015)

Includes:

- The underground cable is to be predominantly installed within the public road except at start and end points of the route where it will be in privately owned lands.
- Letters of consent from Jonathon Gilmore (landowner at start of route – Folio CN24351) and from ESB Networks (landowner at end of route – Folio MH10116).

5.1.4 Planning Authority Submission (Cavan County Council)

- By reference to Class 26, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, the Planning Authority is of the opinion that the development appears to be exempted development.
- There are no national monuments, protected structures, Natura 2000 or natural heritage areas affected by the development.
- Query whether there is an issue in concluding that the development is exempted development having regard to the fact that the previous application associated with the development was subject to an EIS.
- Query whether issuing this Declaration is contrary to the O’Grianna case findings.
- The Planning Authority is of the opinion that a screening for EIS may be required in order to ascertain whether the development on its own or in conjunction with the approved development would require an EIS.

5.1.5 Transport Infrastructure Ireland (TII)

- As the 5.5 kilometre cable route proposed does not traverse any national road network the issue at hand is outside the remit of the Authority in this specific instance.
- However, in the interests of avoiding unintended consequences for the national road network arising from a determination in this case, through establishing precedent, the Authority would welcome

certain considerations being taken into account by the Board in determining this case.

- Section 3 of the Planning and Development Act, 2000 defines development and having regard to the nature and extent of works proposed in the referral, the Authority is of the opinion that the proposal constitutes development for the purposes of the Act.
- Section 4 of the Act makes provision for exempt development regulations which are set out in the Planning and Development Regulations, 2001 – 2015.
- Article 9 of the Regulations provide that development to which article 6 (i.e. exempt development) relates shall not be exempted development for the purposes of the Act –
 - (a) if the carrying out of such development would –
 - (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, watermain, 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.

In this specific instances, it does not appear from the information referred that the proposal consists of or comprises a connection to an electricity supply line or cable as the essence of the development proposed itself is to provide such infrastructure. Therefore, it does not appear that the scope to rely on the above 'exemption' is available to the scheme promoter in this instance.

- Furthermore, it does not appear that the proposed works can be considered exempt development under Schedule 2, Part 1 as the scheme promoter does not appear to be a statutory undertaker for the purposes of the Exempt Development Regulations.
- The Authority would draw the Board's attention again to Article 9 of the Regulations which provides that development would not be exempted development for the purposes of the Act if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users, Article 9(1)(a)(iii) refers.

5.1.6 Environmental Health Service – HSE

This submission sets down a number of comments in relation to the implementation of the proposed development. It does not refer to the question the subject matter of the referral, namely, whether or not the development in question constitutes development and/or exempted development for planning purposes.

5.1.7 Cavan County Council Response to Submission of TII

No further comments.

5.1.8 Raragh Developments Limited Response to Submission of TII

Includes:

- Being an underground cable the proposed development will have no impact on traffic safety. A road opening licence will be sought for the works and all health and safety and traffic management requirements will be adhered to during construction.
- Class 26 is specifically omitted from the restrictions imposed by Article 9(i)(a)(v).
- In relation to Class 26 and it applying to any “undertaking authorised to provide an electricity service”, the developers have been granted an authorisation to construct and licence to generate under Sections 14(i)(a) and 16 of the Electricity Regulation Act 1999.
- Under Section 2, Part 1 of the Electricity Regulation Act 1999 the above referenced licence classifies Raragh Developments Limited as maintaining an “electricity undertaking” defined as “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”.
- Reference to previous decisions where grid connection works were deemed exempted development under similar circumstances:

ABP Ref. RL2789, SWS Energy.
Wicklow County Council Ref. EX18/13, ESB Wind Development
and Coillte Teo.
Limerick County Council Ref. EC15/46, Kilmeedy Windfarm Ltd.

- With regard to Part 1 of Schedule 2 of the Regulations, as the works are classified under Class 26 and will be carried out under an electricity undertaking, the works are not de-exempted by this provision in the Regulations.

5.1.9 Other Bodies/Parties

It is noted that submissions/observations were requested from the following bodies/parties but none were received:

The Heritage Council
Department of Arts, Heritage and the Gaeltacht
An Taisce
Failte Ireland
An Chomhairle Ealaíon
ESB Networks
Jonathon Gilmore

5.2 Meath County Council

5.2.1 Planning Report, dated 28th July, 2015.

Includes:

- The act of laying cables constitutes development within the meaning of Section 3, Planning and Development Act 2000, as amended.
- The applicant has not demonstrated that it is an entity which constitutes an undertaker providing an electrical service for the purposes of Class 26, Planning and Development Regulations 2001, as amended.
- The O'Grinna judgement is of relevance in this case. If it is the case that both the wind farm and grid connection are a single project then EIA is required and, therefore, exemption cannot be availed of.

5.2.2 Raragh Developments Limited (Developer) (received 14th August, 2015).

As per Section 5.1.2 above.

5.2.3 Transport Infrastructure Ireland (TII)

As per Section 5.1.5 above.

5.2.4 Department of Arts, Heritage and the Gaeltacht (DAHG)

Includes:

Nature Conservation

- The environmental review does not provide sufficient enough information with regard to the amount and location of hedgerow habitat that will be lost, the species composition of such hedgerows, or the proposed time of year for the removal of hedgerows.
- There appears to be a misunderstanding of the meaning of in-combination effects in the ecological report. It is stated that the proposed cable route will be installed independent of the wind farm and not in combination, and that therefore there is no potential for cumulative or in-combination effects between these projects. However, in-combination effects should be assessed for ecological issues resulting from the wind farm and cable as well as other plans or projects which may have a cumulative or in-combination impact. For example ecological effects could include a cumulative loss of hedgerows resulting in loss of bird nesting habitat and the use by bats of hedgerows for roosting or feeding or as navigational corridors.

5.2.5 Planning Authority Submission (Meath County Council)

Includes:

- The applicant has been granted a licence to generate electricity which could be taken to fall within the meaning of “providing an

electrical service” as per Class 26, Planning and Development Regulations.

- The O’Grianna judgement is relevant as if the cabling is considered to form an integral part of the overall project, it is the case that both have been examined independent of the other.
- If the wind farm and grid connection are considered to constitute a single project then EIA is required and the exemption cannot be availed of.

5.2.6 Environmental Health Service – HSE

As per Section 5.1.6 above.

5.2.7 Meath County Council Response to Submission of TII

No further comments.

5.2.8 Raragh Development Limited Response to Submission of TII

As per Section 5.1.8 above.

5.2.9 TII Response to Submission of Meath County Council (Section 5.2.5 above)

No specific comments – position as in original submission.

5.2.10 Raragh Developments Limited Response to Submission of Meath County Council (Section 5.2.5 above)

Includes:

- The underground cable routing was selected following significant environmental review. It was determined that AA was not required, including consideration in conjunction with the permitted wind farm project.

5.2.11 Other Bodies/Parties

It is noted that submissions/observations were requested from the following bodies but none were received:

The Heritage Council

6.0 PLANNING HISTORY

Cavan County Council Ref. 09/270, ABP Ref. 02.236608 (file attached)

November 2010 grant of permission for a wind farm comprising 5 turbines to PWWP Developments Ltd at Raragh and Corrinshigo, Kingscourt, County Cavan. The application included an EIS.

Condition 9 expressly indicates that the permission does not consent to a connection to the national grid or routing/nature of same.

Cavan County Council Ref. 15/164

June 2015 grant of extension of duration of the above permission to November 2020 to Raragh Developments Ltd.

7.0 DEVELOPMENT PLANS

7.1 Cavan County Development Plan 2014-2020

No relevant objectives/designations.

7.2 Meath County Development Plan

No relevant objectives/designations.

8.0 LEGISLATION AND CASE LAW

8.1 Legislative Provisions

(a) Planning and Development Act 2000, as amended.

Section 2(1)

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and.....”

Section 3(1)

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to –

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,*
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or*
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking.”*

Section 4(2)(a)(i)

“The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or....”*

Section 4(4)

“Notwithstanding..... any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required”.

Section 172(1)

“An environmental impact assessment shall be carried out by a planning authority or the Board, as the case may be, in respect of an application for consent for –

- (a) *proposed development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which exceeds a quantity, area or other limited specified in that Schedule, and*
- (b) *proposed development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which does not exceed a quantity, area or other limit specified in that Schedule but which the planning authority or the Board determines would be likely to have significant effects on the environment”.*

Section 177U(9)

“In deciding upon a declaration or a referral under section 5 of this Act a Planning Authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section”.

(b) Planning and Development Regulations 2001, as amended

Article 3(3)

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

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”.

Schedule 2, Part 1

Development by Statutory Undertakers

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)

“Development to which Article 6 relates shall not be exempted development for the purposes of the Act –

(a) If the carrying out of such development would –

- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,*
- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31(a) specified in column 1 of Part 1 of Schedule 2 applies,*
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*
- (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*
- (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,*

(c) If it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive.”

8.2 Case Law

O’Grianna (and others) v. An Bord Pleanála (and others), Record Number: 2014 No. 2014 No. 19 JR; 2014 No. 10 COM (copy in file pouch).

9.0 ASSESSMENT

I propose to deal with the issues in these referrals under the following headings:

- O’Grianna
- Legislative Tests
- Precedent Referral Cases (if any)

9.2 O’Grianna

9.2.1 The Board will be aware that the O’Grianna case refers to a High Court judgement on Judicial Review of a permission granted on appeal by the Board for a development comprising 6 wind turbines and associated buildings/infrastructure in County Cork. The Board’s decision on the appeal (Ref. 242223) was made on 15th November, 2013 and the High Court judgement (Ref. 2014 No. 19 JR’ 2014 No. 10 COM) was delivered on 12th December, 2014.

9.2.2 That application for permission attracted a mandatory requirement for EIA as the development exceeded the 5 wind turbine threshold provided for in Class 3(i), Part 2, Schedule 5, Planning and Development Regulations 2001, as amended. As was the case with most wind farm development applications at that time, and in line with advice contained in the Planning Guidelines, no details were included in relation to the connection to the national grid. This would be a matter for later determination as its design (including line, form, overhead/underground) would be undertaken by ESB Networks.

- 9.2.3** In essence the High Court judgement, quashing the Board's decision, was based on the conclusion that the windfarm and the grid connection constituted a single project and that both elements together would have to be subject to EIA in order to comply fully with the terms of the Directive.
- 9.2.4** As a consequence of the judgement new applications for permissions for wind farms developments, and which require EIA, now include relevant information on proposed grid connections.
- 9.2.5** In the context of the subject referrals, however, permission for the relevant wind farm (Cavan County Council Ref. 09/270, ABP Ref. 02.236608) was originally granted in November 2010, i.e. prior to the O'Grianna judgement. The decision was in accordance with the law as it stood at that time. It has since been the subject of a grant of extension of duration (Cavan County Council Ref. 15/164). The permission, therefore, is valid and is beyond challenge. The application was subject to EIA and it is not now proper or possible to revisit this.
- 9.2.6** In the referrals details are provided of the proposed grid connection. The question of EIA, including cumulative assessment, can be addressed in accordance with the requirements of the Directive and as provided for in domestic planning legislation to the extent that is appropriate for the purposes of a referral. As indicated at Section 8.1 above one of the tests that has to be considered in the referrals is whether or not EIA is required for the subject development.
- 9.2.7** While the O'Grianna judgement clearly has had implications for wind farm applications/appeals arising since the judgement, and where applicants have to include details of proposed grid connections to facilitate EIA of the whole project, I can see no impediment to the Board proceeding to deal with the subject referrals while still meeting fully its obligations under the Directive.

9.3 Legislative Tests

- 9.3.1** To recap the question before the Board can be stated as follows:

“Whether the provision of a 20kV underground cable forming the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Kilnalun, County Meath is or is not development or is or is not exempted development”.

9.3.2 The relevant legislative provisions in this case are as set out at Section 8.1. above.

Development

9.3.3 Having regard to the nature of the proposal, namely the construction of c.5.5 kilometres of underground cable, it is clear, by reference to Section 2(1) and 3(1) of the Act, that it does constitute development for planning purposes. The focus, therefore, is on whether or not the proposed development constitutes exempted development.

9.3.4 Following on from Section 4(2)(a)(i) of the Act, and the Regulations made thereunder, the relevant class of development is, as indicated, Class 26, Part 1, Schedule 2, Planning and Development Regulations 2001, as amended. I am satisfied that the proposal is *“a development consisting of the laying underground of....cables.....for the purposes of the undertaking”*. The other requirement of this class is that the development be carried out by an *“undertaker authorised to provide an electricity service”*.

Undertaker/Statutory Undertaker

9.3.5 As indicated Article 3(3) of the Regulations states that an electricity undertaking means *“an undertaker authorised to provide an electricity service”*. However, there is no statutory definition to clarify what exactly this means. The Electricity Regulation Act 1999, at Section 2(1), provides the following definition:

“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”.

9.3.6 I note that while this definition refers to holders of licences/authorisations/permits the use of the conjunction *“including”* prior to the reference to these instruments indicates that they are not essential and that the term *“electricity undertaking”* can apply to *“any person”* engaged in generation, transmission, distribution or supply of electricity. In addition, in the subject case, Raragh Developments Ltd. have been granted the relevant licence/authorisation (see Section 5.1.2 above).

9.3.7 I note that the submission of the TII queries the status of the developer as a statutory undertaker (see Section 5.1.5 above).

- 9.3.8** As indicated Class 26 falls under the heading “*Development by Statutory Undertakers*”. It is one of several classes (Classes 23 – 32) in this part of the Schedule. It seems to me, therefore, that the references to undertakers, undertakings and other bodies/authorities referred to in these classes must be construed as meaning statutory undertakers.
- 9.3.9** The definition of “*Statutory Undertaker*” as provided in the Act appears to encompass a very broad spectrum of categories of persons or bodies. It includes “...*a person, for the time being, authorised by or under any enactment or instrument under an enactment to ...provide, or carry out works for the provision of ...electricity*”. In my opinion Raragh Developments Limited would appear to fall within this category on foot of their authorisation under the Planning Act to construct a wind farm that is a project/works for the provision of electricity. Additionally, they also hold a licence/authorisation under the Electricity Regulation Act.
- 9.3.10** As an aside I would note that the current definition of “*Statutory Undertaker*”, clearly contemplates undertakings that are not solely public undertakings. This compares to the definition in the original 1963 Act [Section 2(1)] that appears to have contemplated public undertakings only. The change presumably reflects the liberalisation of markets in services and infrastructural provision that has occurred since then.
- 9.3.11** I am satisfied, therefore, that the proposed development falls within the scope of the said Class 26.
- 9.3.12** The next step is to consider Section 4(4) of the Act which effectively de-exempts any development which attracts a requirement for Environmental Impact assessment (EIA) or Appropriate Assessment (AA).

Environmental Impact Assessment (EIA)

- 9.3.13** Being an underground cable for the transmission of electricity the proposed development does not fall within a class of development for the purposes of EIA. It cannot, therefore, attract a requirement for EIA.
- 9.3.14** The Board will note that the Environmental review submitted with the applications finds similarly that the project is not of a prescribed class of development for the purposes of EIA. However, it proceeds to screen for EIA in any case. It concludes that the project does not require EIA.

9.3.15 To the extent that the proposed grid connection might, following the O’Grianna Judgement, be viewed, in effect, to be an extension to the wind farm it could perhaps be argued that Class 13, Part 2, Schedule 5 [Development for the Purposes of Part 10 (EIA)] of the Regulations should be considered. This class refers to extensions to developments, including those that would have already been subject to EIA. While it is very difficult to place or measure the proposed grid connection within the terms of this class as would apply in this case, namely the units of measure applied in Class 3(i) for a wind farm (turbines or megawatts), it is clear, in my view, that by any interpretation it would represent only a very minor extension and be far removed from any trigger for EIA. By reference to Article 109(2) of the Regulations, therefore, I consider that the likelihood of significant effects on the environment can be excluded.

Appropriate Assessment (AA)

9.3.16 In relation to AA the application documentation submitted to the Planning Authorities included an AA Screening Report (see Section 3.3 above).

9.3.17 The report correctly identifies the nearest European Site as Killyconny Bog (Cloghbally) SAC (Site Code 000006) at a distance of approx. 15.2 kms to southwest of the subject site, ie. outside the guideline distance usually applied for assessment purposes.

9.3.18 Copies of relevant documentation for this site, including, in particular, the site Conservation Objectives, are included in the file pouch. The qualifying interests for the site are: Active Raised Bogs [7110] (Priority Habitat); and Degraded Raised Bogs still capable of natural regeneration [7120].

9.3.19 The screening report indicates that the Killyconny Bog site is outside the hydrological zone of influence of the project. By reason of this and the significant intervening distance it is concluded that there is no likelihood of significant effects on the European Site arising from the project.

9.3.20 I note a similar conclusion drawn in the Cavan County Council submission to the Board (see Section 5.1.4 above).

9.3.21 In relation to the submission of the DAHG (see Section 5.2.4 above) I consider that there is sufficient information to conclude that there is not a likelihood of significant in-combination effects. Firstly, the small scale of the project is such that it is not reasonably conceivable, in my view,

that it would be likely to give rise to significant effects over and above those likely to arise from the wind farm, the substation or any other project or plan that might be considered. Secondly, the nature of the project, which involves the laying of an underground cable within a c.1m by 0.5m trench mostly in public roads through the built-up area of Kingscourt, is such that significant additional effects are also not likely. In this connection the reference in the DAHG submission to loss of hedgerows is not understood. The only potential loss would appear to be at the extreme northern end of the route where it crosses farmland for a very short distance. In any event, given the nature of the Conservation Objectives/Qualifying Interests of the Killyconny Bog SAC, this is not an AA issue in the subject case.

9.3.22 I consider, therefore, that it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000006, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

9.3.23 I am satisfied, therefore, that the proposed development does not fall within the scope of Section 4(4) of the Act.

Article 9(1) De-exemptions

9.3.24 The next, and final, step in this assessment is to consider the relevant provision of Article 9(1) of the Regulations (see Section 8.1(b) above) in order to check if any of these 'de-exemptions' apply.

9.3.25 In relation to Article 9(1)(a)(iii), which refers to traffic hazard/obstruction of road users, I concur with the developer that the project, being an underground cable, would have no impact on traffic safety. I also note the requirement for a road opening licence and that construction will comply with relevant health and safety and traffic management requirements.

9.3.26 In relation to Article 9(1)(a)(v) I have already concluded that the proposed development falls within the scope of Class 26 (See Section 9.3.11 above) so that this article does not apply.

9.3.27 Articles 9(1)(a)(vii) and (viiA) refer to archaeological and other sites of interest that are the subject of preservation/conservation objectives.

The Board will note that the application documentation submitted to the planning authorities included an Archaeological Assessment (see Section 3.3 above). The assessment was based on both a desk-top review of relevant source material and a walk-over survey/field inspection of the proposed route. While some archaeological monitoring during construction is recommended no findings suggesting any direct impacts of significance are made.

9.3.28 On this basis I am satisfied that the proposed development does not fall within the scope of Articles 9(1)(a)(vii) or (viiA).

9.3.29 Article 9(1)(a)(viiB) refers to the issue of Appropriate Assessment and as such the conclusion reaches at paragraph 9.3.22 above applies.

9.3.30 Similarly Article 9(1)(c) refers to the issue of EIA and as such the conclusion reached at paragraphs 9.3.13 to 9.3.15 apply.

9.3 Precedent Referral Cases

9.4.1 As indicated at paragraph 3.3 above the developer in this case refers to a number of precedent decisions. These include:

ABP Ref. 04.RL.2789 (copy order at rear of file)

This is a 2011 decision that the laying of an underground electricity cable by SWS Energy, also associated with a wind farm, in the Limerick/Cork border area, was exempted development. While the decision was heavily focussed on the matter of the route traversing an SPA, it is of interest in that it also included the decision that the development in question came within the scope of Class 26, Part 1, Schedule 2 of the Regulations.

ABP Ref. 03.RL.2778 (copy order at rear of file)

This is a 2011 decision that the laying of an underground electricity cable by ESB Networks Projects South, also associated with a wind farm, in County Clare was exempted development. Again while much of the decision focussed on the matter of the route crossing an SPA it also confirmed that the development in question came within the scope of Class 26.

I also note that **ABP Ref. 13.RL.2786** is a further 2011 decision of a similar nature (copy order in file pouch).

10.0 RECOMMENDATION

I recommend that the Board should decide these referrals in accordance with the following draft orders:

1. Cavan County Council (RL3369)

WHEREAS a question has arisen as to whether the provision of a 20kV underground cable forming the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Kilnalun, County Meath is or is not development or is or is not exempted development;

AND WHEREAS Raragh Developments Limited, Top Floor, Arena House, Arena road, Sandyford, Dublin 18, Ireland, requested a declaration on the said question from Cavan County Council and the said Council referred the question to the Board on the 15th day of July, 2015;

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

- (a) Sections 2(1), 3(1), 4(4), 172(1) and 177U(9) of the Planning and Development Act, 2000, as amended,
- (b) Articles 3, 6 and 9 and Class 26, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, and
- (c) O’Grianna (and others) v. An Bord Pleanála (and others), Record Number: 2014 No. 2014 No. 19 JR; 2014 No. 10 COM.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) the said underground cable comes within the scope of Sections 2(1) and 3(1) of the Act and constitutes development,
- (b) the said underground cable comes within the scope of Class 26, Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended,

- (c) the said underground cable does not come within the scope of section 4(4) Planning and Development Act, 2000, as amended. In this regard the Board adopts the report of the Inspector in relation to EIA and AA and, thereby, has carried out the necessary assessments to conclude that neither EIA nor AA is required,
- (d) the said underground cable does not come within the scope of Articles 9(1)(a)(iii), (v), (vii), (viiA) or (viiB) or Article 9(1)(c) Planning and Development Regulations, 2001, as amended, and
- (e) as the wind farm for which the proposed electrical connection is required was approved prior to the O’Grianna decision the Board can proceed to decide the subject referral, including the consideration of EIA and AA to the extent that is necessary, in accordance with the relevant legislative provisions.

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 provision of a 20kV underground cable forming the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Kilnalun, County Meath is development and is exempted development.

2. Meath County Council (RL3375)

WHEREAS a question has arisen as to whether the provision of a 20kV underground cable forming the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Kilnalun, County Meath is or is not development or is or is not exempted development.

AND WHEREAS Raragh Developments Limited, Top Floor, Arena House, Arena road, Sandyford, Dublin 18, Ireland, requested a declaration on the said question from Meath County Council and the said Council referred the question to the Board on the 1st day of July, 2015;

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

- (a) Sections 2(1), 3(1), 4(4), 172(1) and 177U(9) of the Planning and Development Act, 2000, as amended,
- (b) Articles 3, 6 and 9 and Class 26, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, and
- (c) O’Grianna (and others) v. An Bord Pleanála (and others), Record Number: 2014 No. 2014 No. 19 JR; 2014 No. 10 COM.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) the said underground cable comes within the scope of Sections 2(1) and 3(1) of the Act and constitutes development,
- (b) the said underground cable comes within the scope of Class 26, Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended,
- (c) the said underground cable does not come within the scope of section 4(4) Planning and Development Act, 2000, as amended. In this regard the Board adopts the report of the Inspector in relation to EIA and AA and, thereby, has carried out the necessary assessments to conclude that neither EIA nor AA is required,
- (d) the said underground cable does not come within the scope of Articles 9(1)(a)(iii), (v), (vii), (viiA) or (viiB) or Article 9(1)(c) Planning and Development Regulations, 2001, as amended, and
- (e) as the wind farm for which the proposed electrical connection is required was approved prior to the O’Grianna decision the Board can proceed to decide the subject referral, including the consideration of EIA and AA to the extent that is necessary, in accordance with the relevant legislative provisions.

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 provision of a 20kV underground cable forming the grid

connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Klnalun, County Meath is development and is exempted development.

**Brendan Wyse,
Assistant Director of Planning.**

11 March, 2016.

sg

Report has been quashed in respect of RL3369 only