



An
Bord
Pleanála

Revised Inspector's Report

RL 11.RL3482A

Question

Whether an electricity grid connection to connect wind farm at Cullenagh Mountain to a sub-station in Portlaoise, is or is not development and is or is not exempted development.

Location

Cullenagh Mountain, Ballyroan and Portlaoise, Co. Laois.

Declaration

Planning Authority

Laois County Council

Planning Authority Reg. Ref.

10/5

Applicant for Declaration

People Over Wind

Planning Authority Decision

None

Referral

Referred by

Laois County Council

Owner/ Occupier

Coillte Teoranta

Observer(s)

People Over Wind

Date of Site Inspection

10th March 2017 & 10th April 2018.

Inspector

Michael Dillon

1.0 Revised Inspector's Report

This Revised Inspector's Report is presented on foot of the Board's Memorandum of 1st February 2018, and contains significant changes and additions to the original Inspector's Report – dated 3rd April 2017.

2.0 Site Location and Description

- 2.1. The site is linear (15.4km), linking a permitted wind farm of 18 no. turbines and associated site works, within a Coillte Teoranta forestry plantation at Cullenagh Mountain (high point 317m), to the east of the village of Ballyroan; connecting it via underground cable (mostly within public roads – amongst which are the R425, R426 and R922 Regional Roads) linking Ballyroan with a sub-station at Abbeyleix Road, Portlaoise, Co. Laois. Only two short sections of county road are included – the run into Ballyroan village and the county road (L6310) connecting the R426 and R922 at Meelick townland just to the south of Portlaoise. The route crosses over the M7 Motorway by-pass of Portlaoise within the Rathleague over-pass bridge structure. A total of 12 no. watercourse crossings have been identified along the route. There is one stretch of bog rampart construction on the R425, within the townlands of Ballyknockan and Pass (a length of approximately 1.0km), flanked mostly by Coillte Teoranta forestry plantations. The cable route is off-road along most of this bog rampart section.
- 2.2. There has been considerable clear-felling at the Coillte Teoranta plantation at Cullenagh Mountain (the wind farm site). There are two mobile phone masts within this plantation – exposed through clear-felling. The roads along which it is proposed to lay the cable are wide enough for two vehicles to pass – with the exception of one small stretch (the Coach Road) just to the east of the village of Ballyroan where two cars can pass, only with care. The roads in the vicinity of Portlaoise are heavily trafficked – the R922, L6310, R426 and R425 as far as Sheffield Cross Roads, being particularly busy on 10th March 2017. There is an amenity picnic area at the junction of the R425 and R427 roads, with overhead 400kV cables at this location. Where the route leaves the public road network and enters farmland in the townland of

Cloncullane, there is a farm track running a considerable way up the hill towards the Coillte Teoranta forestry plantation at Cullenagh Mountain. The area comprises improved agricultural grassland which has been drained, fenced, gated and provided with drinking troughs for livestock. There are a number of one-off houses flanking the route – with a particular concentration just to the south of Sheffield Cross Roads, at Cappoley townland.

3.0 The Question

Whether an electricity grid connection for a wind farm at Cullenagh Mountain, is or is not development and is or is not exempted development.

4.0 Planning Authority Declaration

Laois County Council considered that the level of information available to it, in relation to the question put by People Over Wind, did not allow it to make a Section 5 Declaration in this instance. Given that the Board had issued the grant of planning permission in relation to the wind farm at Cullenagh Mountain (ref. 13/268 – PL 11.242626), which the grid connection would serve, it was deemed appropriate to seek a determination from the Board under section 5(4) of the Planning and Development Act, 2000 (as amended).

5.0 Planning History

Ref. 13/268: Permission refused by LCC to Coillte Teoranta for development comprising a wind farm of 18 no. turbines and associated infrastructure [but not including a grid connection] at Cullenagh Mountain and lands to the south. The application was accompanied by an EIS and an NIS. The applicant appealed the decision to An Bord Pleanála (**PL 11.242626**), and by Order dated 17th June 2014, permission was granted subject to 22 no. conditions. Condition 5 stated-

This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.

Reason: In the interest of clarity.

The development has not been carried out to date.

Ref. 16/481: Permission granted by LCC on 16th November 2016, to construct a 15.4km long, 38kV, underground grid connection from Cullenagh Mountain wind farm site to an existing electricity sub-station at Abbeyleix Road, Portlaoise. Approximately 78% of the route is located within public roads/verges. This decision was the subject of a 3rd Party appeal to An Bord Pleanála (**PL 11.247703**). There is no decision to date on this appeal. It is understood that this appeal to An Bord Pleanála is the subject of Judicial Review by People Over Wind, against the decision of Laois County Council to grant planning permission – 2017 No. 56 J.R. This case in turn has been referenced in a case taken by People Over Wind & Peter Sweetman against Coillte Teoranta – 2016 No. 785 J.R, to the European Court of Justice (C-323/17) – for hearing on 9th March 2018. The case relates to whether, or in what circumstances, mitigation measures can be considered when carrying out screening for appropriate assessment under Article 6(3) of the Habitats Directive. Searches of the CJEU website indicate that this case is in progress.

6.0 Policy Context

6.1. Wind Energy Development – Planning Guidelines (2006)

At section 6.11.3 it is indicated that- “The cost of underground connection from the compound to the national grid is generally prohibitive. This connection can thus be above ground in all but the most sensitive landscapes”.

6.2. Development Plan

6.2.1. When the original Inspector’s Report was written, the relevant document was the Laois County Development Plan 2011-2017. This Plan has since been replaced.

6.2.2. Laois County Development Plan 2017-2023

- The Plan includes, at Section 2.1.2, Aim 13 which states- “Ensure that development is promoted, supported or facilitated by the Laois County Development Plan, provides for climate change including the increased risk of flooding and the promotion of renewable energy where possible;”.
- Policy EN3 states- “Promote and facilitate wind energy development in accordance with Guidelines for Planning Authorities on Wind Energy

Development (Department of Environment, Heritage and Local Government, 2006) and the Wind Energy Strategy which forms part of this Plan, and subject to compliance with normal planning and environmental criteria;”.

- Policy ELEC2 states- “Ensure the provision, where feasible, of electricity cables been [sic] located underground, especially in the urban environment, and generally within areas of public open space;”.
- The Coach Road, Bunny’s Bridge, is on the list of Protected Structures (no. 661), and is stated to be of Local Interest – Appendix 1 of the Plan.

6.2.3. Laois Wind Strategy 2017-2023

The Wind Strategy is contained within Appendix 5 of the County Development Plan. Section 4.2 states- “In addition to the grid connection, the transport of electricity from the turbines to a substation, which connects to the grid, will usually require the establishment of ancillary infrastructure which may cause separate additional visual impact although undergrounding of services, albeit more costly, usually lessens this impact”. Section 6.14 states- “While the grid provider is responsible for grid connections, details of likely routes shall be included with the planning application. Connections within the wind farm will be laid underground”.

6.3. **Natural Heritage Designations**

There are a number of European sites within a 15km radius of the linear grid connection route-

- River Barrow and River Nore SAC (Site code 002162).
- River Nore SPA (Site code 004233).
- Slieve Bloom Mountains SAC (Site code 000412).
- Slieve Bloom Mountains SPA (Site code 004160).
- Mountmellick SAC (Site code 002141).
- Ballyprior Grassland SAC (Site code 002256).
- Lisbigney Bog SAC (Site code 000869).

7.0 The Referral

7.1. Referrer's Case

The Planner's Report from the Council (dated 18th May 2016), can be summarised in bullet point format as follows-

- People Over Wind consider that the grid connection for the wind farm at Cullenagh Mountain was not subject to EIA or AA, as required by law, and, therefore, cannot be considered exempted development.
- A section 5 declaration was sought from LCC on the matter.
- A grid connection did not form part of wind farm application ref. 13/268, and it was indicated that it may be exempted development. The connection was indicated to the sub-station at Abbeyleix Road, Portlaoise.
- The Council considers that the question put to it by People Over Wind is too vague.
- Further information was requested of the applicant for the declaration (People Over Wind). The response received was insufficiently detailed to allow LCC to make a declaration.
- Given the importance of the question, and as it relates to a large wind farm development which was granted permission by the Board, it was considered appropriate to seek a section 5(4) determination from the Board.

By letter dated 24th June 2016, An Bord Pleanála wrote to LCC requesting details of the grid connection route and type. By letter dated 14th July 2016, LCC responded that it did not have any details in relation to the grid connection route.

7.2. Original Observer's Response

An Bord Pleanála referred the case to People Over Wind on 24th May 2016, requesting comment. The response, received by An Bord Pleanála on 14th June 2016, can be summarised in bullet point format as follows-

- The EIS for the wind farm at Cullenagh Mountain states that the grid connection will be to the sub-station at Abbeyleix Road, Portlaoise. The grid connection was not the subject of the wind farm application.
- A development cannot be exempted development, if EIA is required.
- The decision of the High Court in the Ó Grianna case issued subsequent to the granting of planning permission for the Cullenagh Mountain wind farm.
- The EU is ensuring that Ireland takes necessary steps to ensure grid connections for wind farm developments are properly assessed in compliance with the EIA Directive, the Habitats Directive and the SEA Directive.
- The grid connection for this wind farm development is identical to the Ó Grianna case and, therefore, must be subject to EIA in association with the wind farm it is to serve. The fact that the decision pre-dates the Ó Grianna decision does not in any way remove the obligations outlined in the Directives.

The observation is accompanied by a copy of a letter from the European Commission in relation to EU pilot 8398/16 concerning wind farm developments and grid connections – compliance with the EIA Directive, the Habitats Directive and the SEA Directive.

7.3. Owner/Occupier's Response

- 7.3.1. An Bord Pleanála referred the case to Coillte Teoranta on 24th May 2016, requesting comment. It would appear that the post was not directed to the correct person within the company (RPS Planning & Environment) acting for the owner/occupier, Coillte Teoranta. The Section 131 Notice was reissued – requesting a response by 14th July 2016. The response of the owner/occupier was received on 14th July 2016, but was misplaced upon receipt within An Bord Pleanála. The owner/occupier was requested to furnish a second copy of the submission – which was duly received on 4th August 2016. In the meantime, the original submission of 14th July was unearthed within An Bord Pleanála's offices. It is this earlier submission of 14th July which is attached to the current referral file.
- 7.3.2. The response of Coillte Teoranta, received by An Bord Pleanála on 14th July 2016, can be summarised in bullet point format as follows-

- The history in relation to wind farm application (13/268) is set out. The Board carried out EIA and AA and granted planning permission, ref. PL 11.242626.
- An underground 38kV power line is proposed from Cullenagh to Abbeyleix Road sub-station in Portlaoise. The trench will be approximately 1.2m deep. Some 78% of the length is located within roads or road verges. The remainder is located within Coillte Teoranta forestry plantation or agricultural land – the one affected farmer has consented to the cable laying within his farm.
- There will be no in-stream works. All watercourse crossings are indicated at Table 3.1 of the document. The cable will be laid within bridge/culvert structures at watercourse structures or else beneath the watercourses using directional drilling. Details of the technology involved is included within documentation submitted with this response.
- The route traverses a section of old coach road at Banny's Bridge to the east of Ballyroan Village. The coach road is listed on the Record of Protected Structures within the Laois County Development Plan.
- There are a number of Recorded Monuments within the village of Ballyroan.
- There is a section of floating road/bog rampart within the townlands of Pass and Ballyknockan – approximately 1.0km. The grid route is diverted off this section of road into Coillte Teoranta plantations to east and west. Approximately 300m will be located within floating road – and directional drilling may be required for this section – between points 6 and 7 on Figure 3.6.
- A Road Opening Licence will be required from LCC, and this Licence will deal with issues of traffic management during trench works.
- The term 'electricity undertaking' can apply to any person. The term 'Statutory Undertaker' within the Act encompasses 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 *inter alia* '(b) provide, or carry out works for the provision of gas, electricity or

telecommunications services...' Coillte Teoranta has a planning permission to develop a wind farm for the generation of electricity.

- Section 4 of the Planning and Development Act provides for exempted development. Section 4(4) provides that any development requiring EIA or AA shall not be exempted development. Screening exercises for both have been carried out, and it is concluded that the grid connection would not require EIA or AA.
- Articles 6 & 9 of the Planning and Development Regulations provide that certain classes of development shall be exempted. Class 26 of Part 1 of Schedule 2 provides for- 'The carrying out by an undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purpose of the undertaking'. There are no conditions or limitations attached to this Class.
- Class 16 of Part 1 of Schedule 2 is also of relevance – relating to works required temporarily in connection with the carrying out of a permission. This class is restricted by the necessity to remove structures, works, plant or machinery at the expiration of the period and the land reinstated.
- Works within the Rathleague overbridge on the M7 fall under section 4(1)(h).
- Article 9 de-exempts certain classes of exempted development. 9(1)(v) provides an exclusion for development under class 26 (amongst others).
- The submission goes on to refer to a number of section 5 referral cases where the Board has declared that grid connections can be considered exempted development – particularly where permission was given for the wind farm prior to the Ó Grianna judgement on 12th December 2014.
- A number of local authorities have concluded that the laying of underground grid connection cables for wind farms constituted exempted development.
- This underground grid connection is considered to be exempted development.

7.3.3. The response is accompanied by a number of supporting documents as follows-

- Opinion from Arthur Cox, Solicitors (dated 14th July 2016) that underground grid connection is exempted development under Class 26 of Part 1 of

Schedule 2 to the Planning and Development Regulations, 2001 (as amended).

- Letter from Coillte Teoranta (dated 14th July 2016), stating that it intends to rely on the opinion of Arthur Cox Solicitors, to construct the underground grid connection as exempted development under the aforementioned Class 26. Coillte Teoranta is designated as a 'Public Authority' under Article 2(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended). Screening for AA was carried out in relation to the grid connection, and Coillte Teoranta concluded that AA was not required in this instance (dated 14th July 2016).
- Outline Construction Environmental Management Plan (dated July 2106), which broadly sets out the best practice to be followed, roles and responsibilities, site management and procedures.
- Outline Cable Route Construction Methodology (July 2016), which broadly sets out methodologies of laying cable within different ground conditions. Appendix B contains a set of Preliminary Grid Route Drawings.
- Ecological Report (dated July 2016), which broadly describes the existing environment and habitats along the route, proximate European sites and nature conservation areas – and includes a Stage 1 Presence/Absence Freshwater Pearl Mussel Survey (dated 17th June 2016).
- Environmental Impact Assessment Screening Report (dated July 2016), which concludes that EIA is not required for the grid connection – taking into consideration cumulative impact with the Cullenagh wind farm development. An appendix to this report comprises a Cultural Heritage Assessment Report.
- Appropriate Assessment Screening Report (dated July 2016) which concludes that the grid connection, either by itself or in-combination with other plans and projects would not have any significant effect on European sites.

7.4. Further Responses

- 7.4.1. The response of Coillte Teoranta, received by An Bord Pleanála on 14th July 2016, was referred to LCC for comment. There was no response received.

7.4.2. People Over Wind made a submission to An Bord Pleanála on 12th September 2016. This was returned, on grounds that it constituted elaboration on a submission already made. On 19th October 2016, An Bord Pleanála received a letter from O'Connell & Clarke, Solicitors, agent on behalf of People Over Wind, stating that their clients had become aware that Coillte Teoranta had submitted substantial screening reports to An Bord Pleanála. It was the opinion of the agents that their client should be given an opportunity to comment on these reports. By letter dated 16th November 2016, An Bord Pleanála referred the submission of 14th July 2016, from Coillte Teoranta, to People Over Wind, for comment on or before 6th December 2016. The response of People Over Wind, received by An Bord Pleanála on 29th November 2016, can be summarised in bullet point format as follows-

- The EIS screening is not valid, as it does not assess the combined effects of the grid connection and the associated wind farm development. The Ó Grianna judgement is of relevance in this instance. The judgement applies to all applications, regardless of whether permissions were granted before or after the judgement issued.
- The AA screening identifies potential significant effects on the [sic] SAC. AA screening for the grid connection in-combination with the wind farm is required.
- Mitigation measures have been used to screen out AA. This is not acceptable. The mitigation measures are not specified or detailed.
- Condition 17(k) of the wind farm permission specifies stringent limits in relation to discharge of silt to watercourses. This condition was critical to the development proceeding. There is no such guarantee in relation to the grid connection – which is located within the same Freshwater pearl mussel catchment.
- It is understood that the determination of the Board in relation to RL2269 was quashed (14th October 2016), following Judicial Review proceedings.

8.0 Statutory Provisions

8.1. 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(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.

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 proposed development where either–

- (a) the proposed development would be a class specified in-

(i) Part 1 of Schedule 5 of the Planning and Development Regulations 2001, and either-

(I) such development would exceed any relevant quantity, area or other limit specified in that Part, or

(II) no quantity, area or other limit is specified in that Part in respect of the development concerned,

or

(ii) Part 2 of Schedule 5 of the Planning and Development Regulations 2001, and either-

(I) such development would exceed any relevant quantity, area or other limit specified in that Part, or

(II) no quantity, area or other limit is specified in that Part in respect of the development concerned,

or

(b) (i) the proposed development would be of a class specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001 but does not exceed the relevant quantity, area or other limit specified in that Part, and

(ii) the planning authority or the Board, as the case may be, determines that the proposed development 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.

8.2. 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.

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,
 - (vi) interfere with the character of a landscape, or a view or a prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
 - (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.

Schedule 2, Part 1

Temporary structures and uses

Class 16

The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out. Column 2 restricts this exemption as follows- "Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

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.

Schedule 5

Development for the Purposes of Part 10.

Part 1

20. Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.

Part 2

3.(b) Industrial installations for carrying gas, steam and hot water with a potential heat output of 300 megawatts or more, or transmission of electrical energy by overhead cables not included in Part 1 of this Schedule, where the voltage would be 200 kilovolts or more.

13. *Changes, extensions, development and testing*

(a) Any change or extension of development which would:-

(i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and

(ii) result in an increase in size greater than –

- 25 per cent, or

- an amount equal to 50 per cent of the appropriate threshold,

whichever is the greater.

Schedule 7

Criteria for determining whether a development would or would not be likely to have significant effects on the environment (*Articles 103, 109 and 120*).

9.0 Assessment

I propose to address the issues of this referral under the following headings-

- General comment in relation to the nature of the underground grid connection and the likely principal impacts on the environment.
- The need for Environmental Impact Assessment (EIA).
- Implications of recent legal judgements.
- Some precedent referral cases.
- Legislative context.
- Appropriate assessment.

9.1. **General Comments on Route and Construction Techniques**

Some 78% of the length of the route is to be constructed within public roads. The trench will be 1.2m deep and 0.6m wide. There is one section of floating road/bog rampart within the townlands of Pass and Ballyknockan/Ballycarnan. For that section within Pass townland, the cable is to be rerouted off-road into Coillte Teoranta plantation to east and west of the road – crossing beneath the R425 at one point using directional drilling. There is a further section of bog rampart road identified immediately to the north (300m), within the townlands of Ballyknockan/Ballycarnan (the centre of the road being the townland boundary), which may require special construction measures. Certainly, the road would appear to be of bog rampart construction – raised above the level of flanking lands. The lands to the east of this section of road are named Castlebog Wood – the name alone indicating the nature of the underlying ground. There is no option for off-road construction along this 300m length. The Outline Cable Route Construction Methodology indicates that directional drilling may be required under some or all of this 300m section – depending on the extent of bog rampart construction. Some 1.3km of the route is located within farmland. Existing excavated material will be used in backfilling the trench. Some 1.5km of the route is located within the wind farm site. A further 0.7km is located within Coillte Teoranta plantations at Pass townland. A 1.2m deep trench is to be excavated, almost entirely within existing forest roads (within the wind farm site), with cables laid as outlined above. Excavated material will be used in backfilling the trench. The Coillte Teoranta response included an Outline Cable Route Construction Methodology, indicating

exactly how the cable is to be laid along different sections of the route. Approximately 50-100m lengths of trench will be opened at any one time. Cables will be laid by a number of crews working simultaneously – with a minimum separation of 2-3km between them, to prevent unacceptable impact on road traffic. The construction period is estimated at 30 weeks.

9.2. Screening for Environmental Impact Assessment

- 9.2.1. Section 4(4) of the Planning and Development Act, 2000 (as amended), effectively de-exempts development which would require environmental impact assessment or appropriate assessment.
- 9.2.2. The Coillte Teoranta submission included an Environmental Impact Assessment Screening Report – dated August 2016. Schedule 5, Part 1 of the Planning and Development Regulations, 2001 (as amended), sets out specified development for which EIA is mandatory. Class 20 refers to overhead electrical power lines of 220kV or more with an overall length of more than 15km. The grid connection proposed is of 38kV and will be underground. Class 22 refers to changes or extension of projects listed in Part 1, subject to certain thresholds. An underground cable does not comprise a development specified in Part 1. Part 2 specifies sub-threshold development which may require EIA. Class 3.(b), refers, *inter alia*, to transmission of electrical energy by overhead cables not included in Part 1 of this Schedule, where the voltage would be 200 kilovolts or more. There is no class of development referenced within Part 2 of Schedule 5 which approximates to underground power cables.
- 9.2.3. I note that Paragraph 13 of Part 2 of Schedule 5 allows for change or extension of development already authorised, executed or in the process of being executed, which would result in an increase in size of greater than 25% or an amount equal to 50% of the appropriate threshold, without the need for EIA. The wind farm which this grid connection serves is already authorised. The creation of a 15.4km long, 38kV underground, cable linking the proposed wind farm to the sub-station at Abbeyleix Road, Portlaoise could, perhaps, be regarded as an extension to the wind farm – and one which certainly would not result in a 25% increase in the site area of the wind farm, and where the reference to 50% of the appropriate threshold is not applicable – as there is no class of development to which a 38kV underground cable

would approximate. If this reasoning is followed, then there is no need for EIA. However, I would be inclined to the opinion that the thresholds relate to the principal activity of the development – which is the generation of electricity from wind turbines. If the Board does not consider this Paragraph 13 line of argument to be of relevance, the following screening for EIA may be of assistance.

- 9.2.4. The likely significant impacts of the wind farm at Cullenagh Mountain were considered by Laois County Council and by the Board (ref. PL 11.242626), which file is travelling with this current referral case. Significant impacts identified were visual & landscape, residential amenity (noise and shadow flicker), traffic (haul routes), ecology (birds in particular), and cumulative impact with other development. Mitigation measures were outlined in documentation submitted with the application and appeal, and conditions were attached to the Board's grant of permission, to minimise impacts. I would consider that the two principal issues relating to the impact of the grid connection on the environment, are ecology and archaeology/built heritage.
- 9.2.5. Coillte Teoranta, in response to the referral of Laois County Council in the current instance, has submitted an Environmental Impact Assessment Screening Report for the proposed grid connection, prepared by RPS (July 2016), which concludes that the project does not require EIA. The finding on likely environmental impacts and the carrying out of EIA is the function of the planning authority – or in this instance, An Bord Pleanála.
- 9.2.6. For the purposes of screening for EIA, I have had regard to Schedule 7 of the Planning and Development Regulations, 2001 (as amended). As the referral was made to the Board prior to the coming into effect of the amended EIA Directive 2014/52/EU, in May 2017, I have had regard to the provisions of the original Schedule 7 criteria, and not the revised selection criteria referred to in Article 4(3) and set out at Annex III of the Directive. Schedule 7 of the Planning and Development Regulations, 2001 (as amended) contains criteria for determining whether a development would or would not be likely to have significant effects on the environment set out in three broad headings relating to characteristics and location of proposed development, and the characteristics of potential impacts. Considerations in relation to the proposed grid connection, relative to the Schedule 7 criteria, are as follows-

1. Characteristics of the Proposed Development

The size of the proposed development

The 38kV underground grid connection (15.4km) will run within public roads/verges (78%), forest/agricultural tracks, commercial coniferous plantation and improved agricultural grassland between the proposed wind farm at Cullenagh Mountain and the existing sub-station at Abbeyleix Road, Portlaoise. The route will contain joint bays for pulling cables through ducting (measuring 6.0 x 2.5m and 2.5m deep). Joint bays are backfilled following cable pulling. There are no inspection chambers proposed. The trench is typically 1.2m deep and 0.6m wide. Marker posts and marker plates (within areas of shallow excavation) will be put in place. Work teams would work simultaneously 2-3km apart, and estimated time for completion of works is 30 weeks. At watercourse crossings, the cable will be laid in the structure of the road, or where such is insufficient, using directional drilling beneath the watercourse – necessitating the construction of launch/reception pits (2.5 x 6.0m and 2.5m deep). Some directional drilling may also be required at bog rampart road construction. Works will require a Road Opening Licence under section 254 of the Act. The size of the proposed development is not significant.

The cumulation with other proposed development

There are no known relevant projects in the vicinity of the grid connection route, aside from the Cullenagh wind farm which it serves, which could have a cumulative impact with the grid connection. The grid connection route is only partially located within the wind farm site, within existing forest tracks, and there will be no cumulative impact, even if work for both elements of the project is carried on simultaneously. The grid connection, outside of the wind farm, is located, by its nature, some distance from it. Only at one short stretch (500m) of the R425 would the haul route for the wind farm and the grid connection route be conterminous. The road is wide at this point and there would be no cumulative impact – even if work for both elements of the project is carried on simultaneously. An Bord Pleanála undertook EIA for the wind farm development, and granted planning permission, noting the acceptability of the mitigation measures proposed, and the residual impacts.

The nature of any associated demolition works

There are no known demolition works associated with the grid connection route.

The use of natural resources

There are no significant natural resources to be used in the development of the grid connection, other than stone fill for trenches.

The production of waste

The development of the underground cable would not produce any significant waste at the construction or operational phases. Material excavated would primarily be used to reinstate affected areas after the laying of the underground cable. Any other waste would be removed off-site for disposal at an authorised waste facility. There is no reference to use of borrow pits at the wind farm site for the disposal of surplus spoil.

Pollution and nuisances

No known significant pollution or nuisance is likely to arise from the laying of the underground cable within public roads/verges, forest/agricultural tracks, commercial coniferous plantation or improved agricultural grassland – subject to implementation of best-practice during construction, to mitigate against siltation of watercourses and accidental spillage of chemicals or hydrocarbons.

The risk of accidents, having regard to substances or technologies used

Directional drilling has the potential for contamination of watercourses if not correctly managed – arising from use of sodium bentonite. Bentonite batching, pumping and recycling plants will be bunded using ‘terram’ and sandbags. Spill kits will be available during works. Concrete-contaminated material could potentially enter watercourses in the vicinity of the corridor. The Coillte Teoranta response of 14th July 2016, includes a number of protection measures to be observed during directional drilling, work in the vicinity of floating road sections, typical bridge crossings, trench works, and works in the vicinity of watercourses. No likely significant effect would arise with any reasonable application of conventional drainage management procedures for dewatering of trenches and potential downstream discharge to watercourses.

2. Location of proposed development

The existing land use

Land uses are to be retained, as the affected areas will be reinstated after the laying down of the underground cable. Any impact on land use would be negligible. On-site surveys have not indicated the presence of any invasive species along the grid route corridor.

The relative abundance, quality and regenerative capacity of natural resources in the area

Potential impact on European sites has been addressed in the Appropriate Assessment section of this Inspector's Report, and it is not proposed to repeat it here. Of note is the choice of route so as to avoid European sites. The nature of the terrain under which the grid connection will be laid comprises only roads/verges, forest/agricultural tracks, commercial coniferous plantation and improved agricultural grassland. Affected areas will be reinstated, and recolonisation of vegetation would result. There will be no notable changes in soils and geology. Biodiversity is not likely to be affected in any significant manner and, where any minor change may result, it is reasonable to determine that the laying of the underground cable along any potentially affected area would be temporary due the nature of the works proposed. Overall, the environment through which the underground cable will be laid has the capacity to regenerate rapidly, arising from any likely minor environmental changes.

The absorption capacity of the natural environment, paying particular attention to the following areas:

- (a) wetlands,**
- (b) coastal zones,**
- (c) mountain and forest areas,**
- (d) nature reserves and parks,**

(e) areas classified or protected under legislation, including special protection areas designated pursuant to Directives 79/409/EEC and 92/43/EEC,

(f) areas in which the environmental quality standards laid down in legislation of the EU have already been exceeded,

(g) densely populated areas,

(h) landscapes of historical, cultural or archaeological significance.

The proposed grid connection will be laid underground in roads/verges, forest/agricultural tracks, commercial coniferous forestry and improved agricultural grassland, beyond any wetlands, coastal zones, densely populated areas, or landscapes of historical, cultural or archaeological significance. I have elsewhere in this Inspector's Report commented on any likely significant impacts on European sites, and it is not proposed to repeat that assessment here.

The Coillte Teoranta submission included an Ecological Report. General walk-over site surveys were undertaken on 17th December 2015 and 14th January 2016. Some 78% of the route is laid within public roads/verges. A length of 1.3km lies through improved grassland where the route emerges from the Coillte Teoranta coniferous forestry plantation at Cullenagh Mountain. Within the townland of Pass, the route will be diverted off-road into Coillte Teoranta forestry plantations (0.7km) – first to the west and then to the east of the R425. This will involve felling of trees to create a passage for the new cable trench. All watercourse crossings along the 15.4km route have been identified. In addition, there is a section of floating road on the R425 built on peat within the townlands of Ballycarnan/Ballyknockan (0.3km). The cable will be laid within the road base at watercourse crossings where there is sufficient depth for such; otherwise directional drilling will be used beneath the watercourse – to ensure that there is no disturbance of water-based habitats along the route. This will involve construction of launch and reception pits up to 2.5m wide, 6.0m in length and 2.5m deep.

Aquatic surveys were undertaken on 3rd and 4th May 2016, for purposes of assessing water quality. Eight of the twelve identified water crossings are Environmental Protection Agency (EPA) mapped. Only two had water flows suitable for Q-value sampling. Macro-invertebrate surveys were carried out for the two – a tributary of the Ballyroan Stream at Banny's Bridge and the Triogue River within Meelick

townland. Both revealed Q-values of Q3-4 – Moderate Status. The southern half of the grid connection route is located within the Nore Freshwater Pearl Mussel Catchment – established by the Freshwater Pearl Mussel Nore Sub-Basin Management Plan (2009). The remainder of the route is located within the Barrow catchment, within which the status of Freshwater pearl mussel (previously recorded) is unknown. The Freshwater pearl mussel surveys were undertaken on 3rd May 2016, at eight EPA-identified water crossings, under licence from the NPWS. The surveys revealed no evidence of either adults or juveniles; alive, or as dead shells. A number of the first order watercourses were dry/ephemeral channels, or were significantly culverted or piped, and, therefore, not suitable habitat for this species. The closest point of the River Nore is 11.0km downstream of a stream crossing in Ballyroan village – via the Gloreen River. No in-stream works are proposed as part of this development. Directional drilling is to be used where the cable is to be laid beneath watercourses. Construction practices outlined in the Outline Construction Environmental Management Plan, the Outline Cable Route Construction Methodology and Outline Surface Water Management Plan are included to ensure that the water quality at water crossings will not be impacted.

Approximately 50m of the grid connection route traverses the Ridge of Portlaoise pNHA (Site code 000876). This is an esker-based feature containing two rare plants protected under a Flora Protection Order. The Development Plan describes it as an “Esker ridge, ash/hazel woodland, species-rich grassland, disused gravel pits”. It extends through Portlaoise and out to the southeast along the R426. The R426 is a new road at this location (constructed as part of the N7 Motorway by-pass of Portlaoise). The grid connection route will be located within or along a public road in this location, and will not impact on the pNHA.

There will be no impact on improved agricultural grassland habitat other than short-term disturbance during the laying of the cable. Considerable clear-felling was under way at Cullenagh Mountain in March 2017. The proposed development will not result in any significant loss of trees at this location – being almost entirely located within forest tracks within the wind farm site. Some coniferous plantation will have to be felled to facilitate the construction of part of the off-road section within the townland of Pass. Such trees would be subject to rotation felling at some stage in the future, at any event. The loss will not be significant.

No Smooth newt or Common lizard were encountered during site surveys. Otter was recorded on the Triogue River. The watercourse at Banny's Bridge is the only other one suitable for Otter. The grid connection will be within the road base in both of these locations, and so will not have any impact on the species other than short-term disturbance during construction. Pine Marten was recorded during site surveys for the wind farm development at Cullenagh Mountain. The laying of a trench within forest roads will not have any significant impact on the species. Badgers are likely to be active along most of the grid connection route. Works will be of limited duration and will not have any significant impact on the species – particularly along busy Regional roads. Bat roosts were identified during surveys of the wind farm site. Mature trees have potential to be roost sites. Bat species forage throughout the forest at Cullenagh Mountain and along roadside hedgerows. Bridges along the grid connection route are stated not to be suitable for bat roosts. None of the water channels surveyed were substantive enough for Kingfisher – a species of conservation interest for the River Nore SPA. No invasive species (Japanese knotweed, Himalayan balsam, Giant hogweed or Rhododendron) were identified along road margins of the grid connection route.

The principal measures outlined to protect the ecology of the area (water quality and displacement of species) during the laying of the cable, would include the following-

- Absence of in-stream works.
- Sediment control measures (silt traps, check dams, bunds) and systems for dealing with handling, storage and accidental spillages of hydrocarbons/drilling fluids.
- Limited extent of trench openings at any one time (50-100m lengths).
- Temporary nature of construction phase over a wide area (15.4km) – limiting the impact of noise, vibration and dust on habitats and species.
- Limited loss of habitat within coniferous plantation areas.
- Limited overlap with wind farm site resulting in insignificant cumulative impact – even if works for both the wind farm and the grid connection are carried out at the same time.

- Appointment of an ecological clerk-of-works to supervise all elements of construction.
- Halting of works during periods of heavy rainfall.
- Use of buffer zones and storage of stockpiled materials at least 20m from watercourses.
- Use of bog mats for machinery operating on soft ground.
- No trees will be felled between 15th April and 31st August.
- Machinery introduced to site will be checked for invasive species.
- Pre-construction surveys undertaken (where necessary under licence) for breeding bats, Badger and Otter.

The Coillte Teoranta submission was accompanied by a Cultural Heritage Screening Report (included as an appendix of the Environmental Impact Assessment Screening Report). A site visit was undertaken on 9th March 2016 (colour plate photographs included). Ballyroan village is an area of archaeological potential which contains a number of upstanding items of archaeological interest including a motte, castle site, mediaeval church & graveyard site and a 17th century house. Most of the Protected Structures are contained within or around the village of Ballyroan. Only one, a Coach Road (RPS 661), would be directly impacted by cable laying. The remainder flank the Main Street – set back behind a footpath. The Cultural Heritage Assessment Report indicates that the Coach Road may in fact be of mediaeval origin. This Protected Structure is contained within an existing public road. The road has a modern tarmacadam surface. The cable trench will be constructed within the road, and there will, therefore, be no impact on this Protected Structure.

Archaeological test trenching under Licence from the Department of Arts, Heritage, Regional, Rural & Gaeltacht Affairs would be undertaken prior to excavation within the affected section of Coach Road. Archaeological monitoring would be undertaken at launch and reception pits, where directional drilling is to be undertaken.

There is one recorded archaeological site located along the proposed cable route – the deserted mediaeval settlement of Ballyroan (LA024-060), situated within the modern village of Ballyroan. The exact boundaries of this settlement are unknown, although the area of archaeological potential may extend as far east as the Main

Street (along which it is proposed to lay the cable). For the purposes of the Report submitted by Coillte Teoranta, the area of archaeological potential is stated to include the entire Main Street and a portion of the county road leading to Banny's Bridge (the Coach Road) to the east. A second associated site – a 17th century building in Ballyroan village – is located immediately adjacent to the cable route, on the west side of the Main Street (LA024-059). The cable route is located within the existing Main Street at this location, and will not have any significant impact on the recorded monuments – notwithstanding that mediaeval plots may extend beneath the existing street. The building itself is set back off the road behind a public footpath. Further sites with archaeological potential have been identified in Cloncullane townland – being an old roadway and associated iron works – currently located within fields. The cable route would be diverted off a trackway in this area, in order to increase the separation distance from Recorded Monument LA024-011 – an enclosure site. Also identified is the bog at Pass townland (part of the Cashel Bog complex) – where the cable will be laid within the R425, which because of its nature, may contain preserved archaeological material.

A derelict smithy, a 20th century memorial, and three old manual water pumps were also identified along the line of the route. None of these structures would be affected by the cable-laying. A former toll house (now an outbuilding) and a mile stone (100m to the south of it) have been identified in Cashel townland on the R425. Neither would be impacted by the development. Banny's Bridge (late 18th or early 19th Century) has been identified as an industrial heritage structure, as has Meelick Mill (late 18th Century). The cable route may run through the structure of Banny's Bridge; although the option of directional drilling in this area is referred to. The Report identifies old bridges and culverts along the route of the grid connection and includes photographs of same. The cable laying will not impact to any significant degree on these structures.

Section 6 of the Report includes a number of mitigation measures which include the following items of note-

- Archaeological monitoring of cable route within Ballyroan village – and test trenching (under licence) within the Coach Road section.
- Archaeological monitoring of old road within Cloncullane townland.

- Archaeological monitoring of cable route at bog in Pass townland.
- Archaeological testing within greenfield area in Cloncollane townland.
- Archaeological monitoring of launch and reception pits for directional drilling.
- Precautions to be taken when excavating in vicinity of upstanding Protected Structures, items on the National Inventory of Architectural Heritage (NIAH) and other cultural structures/features identified in the Report.

I would be satisfied that the issues of ecology and archaeological/built heritage have been comprehensively dealt with in the documentation submitted to An Bord Pleanála, and cable-laying would not have any significant impact on these aspects of the environment, subject to implementation of the mitigation measures as outlined.

3. Characteristics of potential impacts

The extent of the impact (geographical area and size of the affected population)

The laying of the proposed underground grid connection was estimated to take 30 weeks. The underground cable, by its nature, would not be visible to the affected population, and no operational impacts on the resident population in the vicinity of the route corridor are likely to arise. The two principal potential effects on the area through which the cable is to be laid relate to the construction phase, and comprise the potential effects on ecology and archaeology/built heritage. The extent of the impact in relation to these two aspects of the environment has been addressed in the above section of this Report. The character of the terrain through which the underground cable has been laid is of relevance. With regard to traffic impacts, there may be some short-term disruptions to traffic – with teams working simultaneously 2-3km apart. There would be no cumulative impact with the wind farm which the cable serves. In traffic volume terms and in terms of arrival/dispersion of HGV movements over the length of the grid corridor, together with the short timeframe for the laying of the cable, I would be satisfied that there would be only minor increases in traffic volumes affecting the area, and the minor impact would be very much localised.

In terms of operational phase impact, it should be noted that exposure to electromagnetic fields (EMF) is common – even within houses. Underground cables are common throughout the country. Houses flanking the grid connection route are generally set back from the edge of the carriageway – with the exception of the broad main street in Ballyroan village. There is no evidence to indicate that 38kV cables, buried 1.0m below the road surface, would have a deleterious impact on human health. The magnetic field associated with underground cables decreases rapidly with distance, as the ground absorbs the magnetic field. The grid connection will be laid in accordance with the international guidelines for ELF-EMF of the International Commission on Non-Ionizing Radiation Protection (ICNIRP).

The transfrontier nature of the impact

The grid connection has no transfrontier effects.

The magnitude and complexity of the impact

There are no known complexities or significant environmental impacts likely to arise from the laying of the underground cable and from its ongoing operation.

The probability of the impact

The probable impact of the grid connection development can reasonably be determined to be minor/negligible.

The duration, frequency and reversibility of the impact

The grid connection works are estimated to take 30 weeks. The construction phase is not likely to result in any significant environmental impacts. The operational phase will not result in any significant environmental impacts. When, and if, the wind farm development which this grid connection serves ceases to operate, the grid connection cable could, if required, be removed, and the affected lands readily reinstated.

- 9.2.7. As this screening exercise concludes that the proposed grid connection would not have any likely significant impacts on the environment, it may reasonably be concluded that likely significant cumulative impacts with the permitted Cullenagh Mountain wind farm development cannot arise. I note that none of the principal likely

significant impacts considered by the Board, that related to the wind farm development, are applicable to the grid connection in terms of cumulative impacts.

9.2.8. Where the Board has previously determined that the mitigation measures proposed and the residual effects from the Cullenagh Mountain wind farm development itself were acceptable, and where it has been determined that the grid connection would not be likely have any significant environmental impacts or significant cumulative impacts with the wind farm development, then it is reasonable to conclude that the overall project is not likely to have any significant impacts on the environment.

9.2.9. In light of the Ó Grianna judgement, the environmental impact of the grid connection, in association with the wind farm which it is to serve, must be considered. An EIS was prepared for the wind farm development at Cullenagh Mountain, and EIA was carried out by the Board in granting planning permission for it. Section 4 of the Environmental Impact Assessment Screening Report submitted, addresses the potential cumulative impact of both the wind farm development and the grid connection. Having regard to the-

- Short duration of the construction period;
- Underground nature of the cable;
- Location of all but 1.5km of the 15.4km route outside of the wind farm site at Cullenagh Mountain;
- Location of the majority of the route within public roads/verges (78%).
- Absence of in-stream works;
- Measures to protect the environment set out in the Construction Environmental Management Plan which was submitted by Coillte Teoranta to An Bord Pleanála;
- Detailed indication of cable route construction methodology submitted with the referral;
- Measures outlined to control and deal with pollution and accidental spillages – particularly in relation to watercourses;
- Measures for the handling and disposal of waste;
- Route selection to avoid sensitive ecological areas;

- Suspension of forestry activities during construction of the wind farm;
- Consideration of other large projects within County Laois (listed at Table 4.1 of the EIA Screening Report);
- The limited use of natural resources;
- The fact that the principal access to the wind farm site is located on a different road network to the grid connection route;

I would consider that the potential cumulative impacts are deemed to be insignificant, and no significant adverse cumulative impacts on the environment relating to the grid connection and wind farm (or any other plans or projects in the area) could be envisaged.

9.3. Legal Cases

9.3.1. Ó Grianna Judgement

The above screening assessment, and, in particular, the references to the cumulative impacts of the grid connection route and the wind farm which it serves, are considered to satisfy and requirements emanating at this time from the Ó Grianna judgements [1 & 2]. In this regard, the Board will also note the Sweetman and An Bord Pleanála judgements of February and March 2017 [Haughton J], and the comments made therein in relation to the Ó Grianna judgement.

9.3.2. Daly and Kilronan Judgement

This judgement of the High Court was issued on 11th May 2017 – resulting from a section 160 injunction which sought to prohibit Kilronan Windfarm Ltd/Derrysallagh Windfarm Ltd, from carrying out underground grid connection works (38kV) to connect a permitted wind farm at Kilronan in Co. Sligo to a 110kV sub-station at Garvagh Glebe in Co. Leitrim. The case related only to that 2.8km section of underground cable within Co. Leitrim, and the applicant sought an order that the respondents should remove part of cable already laid at or near his lands. The judgement relied on the findings in the Ó Grianna judgement (No. 1) – in as much as a grid connection must be considered an integral part of the wind farm development it served. It indicates that the cumulative effect of both must be assessed, in order to comply with the Directive; although the Ó Grianna case did not decide that the grid

works required planning permission or a separate EIA or AA. Subject, perhaps, to further legal advice, the net effect of the judgement, at this time, appears to be that grid connection for the wind farm at Cullenagh Mountain (which required environmental impact assessment), cannot be considered to be exempted development as a matter of principle. Notwithstanding the EIA screening assessment carried out, and the conclusions as set out in this Inspector's Report, it appears that the Board is constrained, and is required to conclude that, under article 9(1)(c) of the Planning and Development Regulations, 2001 (as amended), the grid connection is development and is not exempted development, as it is development to which Part 10 of the Planning and Development Regulations (i.e. Environmental Impact Assessment) applies. With due regard to these findings, it may be concluded that the grid connection comes within the provisions of section 4(4) of the Planning and Development Act 2000, (as amended).

9.4. Some Precedent Referral Cases

Coillte Teoranta has made reference to a number of precedent Board decisions in its response to An Bord Pleanála. Whilst there have been a number of referral cases in relation to wind farm grid connections, because of the distances involved; differing voltages; connection(s) with other wind farms; the option for over-ground and/or underground cables; whether they have been laid, partially laid or are proposed to be laid; and the potential impact on the environment and on European sites; the circumstances of each case can, and does, vary widely. This is particularly so in relation to visual amenity; impact on sensitive ecology; interaction with other planning permissions, and conditions attached thereto; interaction with other referral decisions; whether wind farm applications included Environmental Impact Statements and/or Natura Impact Statements; whether wind farm/grid connection elements were constructed (and when); and potential impact on European sites. For these reasons, I would adopt a cautious approach in quoting precedent decisions of the Board in relation to the grid connection, the subject of this referral. There is also the added consideration of the implication of the Ó Grianna judgement and the Daly & Kilronan judgement, when examining grid connections for wind farm developments.

RL3234

By order dated 22nd January 2015, the Board decided that the provision of 10kV overhead cable (length unstated) to connect a small wind farm in Co. Clare to the national grid, was development and was exempted development. Permission had been granted on appeal to An Bord Pleanála for two wind turbines – ref. PL 03.131382. Condition 4 stated- “Work on the proposed windfarm shall not proceed until full permission has been granted for the electricity connection to the national grid. *Reason:* In the interest of orderly development”. The Planning Inspector in his Report stated- “It is reasonable to conclude from the reading of this condition that it does not expressly prohibit the developer of the wind farm from availing of the exempted development provisions under the Planning and Development Act. In other words, such associated works, when seeking to avail of the exempted development provisions under the Act, have not been expressly de-exempted by this condition”. The Board, in coming to its decision that the overhead cable was development and was exempted development, did not specifically refer to the Inspector’s conclusion in relation to condition 4, but it did, nonetheless form part of the Inspector’s assessment of the issues before the Board in relation to the referral.

RL3369 & RL3375

These joined referral cases related to construction of 5.5km of 38kV underground cable within both Co. Cavan and Co. Meath, to connect a permitted wind farm in Co. Cavan to a sub-station within Co. Meath. The Board decided on 3rd May 2016, that the underground cable was development and was exempted development. The decision of the Board in relation to that section of the underground cable within Co. Cavan (02.RL3369) was judicially reviewed to the High Court – Val Martin and An Bord Pleanála (2016 No. 460 J.R.). An Order of *Certiorari* issued on 14th October 2016, quashing the decision of the Board in relation to the Co. Cavan element (ABP legal ref. GL0772).

RL3377 & RL3401

By order dated 3rd May 2016, the Board decided that the provision of a 2.6km long, 20kV overhead electricity line between a consented wind farm at Cnoc, Co. Tipperary to a consented 38kV sub-station at Ballybeagh, Tullaroan, Co. Kilkenny, was development and was exempted development.

RL3408, RL3409, RL3410 & RL3411

These four associated cases relate to an existing, partially-shared grid connection for four extant wind farms in County Wexford. The grid connections are almost entirely underground. By Orders dated 28th July 2016, the Board decided that all four grid connections were development and were not exempted development – largely on the basis that the original wind farm permissions (which had not included details of grid connections) contained conditions requiring that grid connections be subject to separate planning permissions. In the event, the grid connections were provided by way of a claim of exempted development status. These decisions of the Board are subject to Judicial Review by the wind farm operators – two separate Judicial Reviews.

RL3436

By Order dated 23rd June 2016, the Board decided that 3.5km of underground 20kV grid connection linking two wind farms in Co. Tipperary, was development and was exempted development.

RL3503

By Order dated 18th April 2017, the Board decided that an underground cable to connect the proposed Yellow River wind farm in Co. Offaly to the existing 110kV sub-station at Derryiron, Rhode, Co. Offaly, was development and was exempted development, by reference to Class 26, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), and to the fact that it did not come within the scope of section 4(4) of the Act – the Board having adopted the EIA screening and AA screening carried out by its' Inspector in relation to the referral.

9.5. Legislative Context

Is or is not Development

- 9.5.1. Having regard to the nature of the grid connection, namely the construction of c.15.4km of underground 38kV 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 the proposed development constitutes exempted development.

9.5.2. 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, of the 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”.

9.5.3. 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 is meant by this. 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”.

9.5.4. 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. 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 would seem, therefore, that the references to undertakers, undertakings and other bodies/authorities referred to in these classes must be construed as meaning statutory undertakers. 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*”. I would be satisfied that Coillte Teoranta would appear to fall within this category on foot of its authorisation under the Planning Acts to construct a wind farm at Cullenagh Mountain, that can be considered to be –

projects/works for the provision of electricity. I 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 that time. I am satisfied, therefore, that the proposed development falls within the scope of the said Class 26.

- 9.5.5. Coillte Teoranta has argued that Class 16 of Part 1 of Schedule 2 is also of relevance in this referral. I consider that this class refers to ‘temporary structures and uses’ – which this grid connection could not be considered to come under. The reference to this class may be related to the temporary nature of the construction works which would be necessary to lay the grid connection.

Is or is not exempted development

- 9.5.6. The final step in the assessment is to consider the relevant provisions of Article 9(1) of the Planning and Development Regulations, 2001 (as amended), in order to establish if any of the ‘de-exemptions’ apply in this instance.

In relation to Article 9(1)(a)(iii), there is no reason why a development of this nature would result in a traffic hazard or obstruction of road users. The developer would be obliged to obtain a Road Opening Licence from LCC, which would impose conditions and requirements on works to be carried out. In relation to Article 9(1)(a)(v), I have already concluded that the proposed development falls within the scope of Class 26 of Part 1 of Schedule 2, so that this article does not apply. Articles 9(1)(a)(vii) and (viiA) refer to archaeological and other sites of interest that are the subject of preservation/conservation objectives. The Coillte Teoranta submission to An Bord Pleanála included a detailed Cultural Heritage Assessment Report. The assessment was based on both a desk-top review of relevant source material and a walk-over survey/field inspection of the grid connection route. Whilst archaeological monitoring during construction is recommended, no findings suggesting any direct impacts of significance are made. On this basis I am satisfied that the proposed development does not fall within the scope of Article 9(1)(a)(vii) or (viiA). Article 9(1)(a)(viiB) refers to the issue of Appropriate Assessment and, as such, the conclusion reached elsewhere in this Inspector’s Report applies. Similarly, Article 9(1)(c) refers to the

issue of EIA and, as such, the conclusion reached elsewhere in this Inspector's Report applies.

9.6. Appropriate Assessment

- 9.6.1. The Coillte Teoranta response included an Appropriate Assessment Screening Report – dated August 2016. The site was visited on 17th December 2015 and 14th January 2016. An aquatic survey was undertaken on 4th May 2016, to establish the presence or absence of Freshwater pearl mussel (*Margaritifera margaritifera*) and Nore Freshwater pearl mussel (*Margaritifera durrovensis*) in watercourses along the grid connection route: none were found. The southern section of the grid connection route is located within the Nore Freshwater Pearl Mussel Catchment.
- 9.6.2. This linear site does not traverse any European site, and nor is it located in close proximity to any such site. The application for the wind farm development at Cullenagh Mountain (which this grid connection will serve) was accompanied by a Natura Impact Statement (NIS). The closest European sites are as follows-
- River Barrow and River Nore SAC – some 4.3km at its closest – but extending widely on all sides of the site along the Barrow, the Nore and their tributaries.
 - River Nore SPA – some 6.4km to the southwest.
 - Slieve Bloom Mountains SAC – some 11.0km to the northwest.
 - Slieve Bloom Mountains SPA – some 8.6km to the northwest.
 - Mountmellick SAC – some 11.0km to the north.
 - Ballyprior Grassland SAC – some 8.8km to the east.
 - Lisbigney Bog SAC – some 9.3km to the southwest.
- 9.6.3. There is no surface water connectivity with Ballyprior Grassland SAC, Lisbigney Bog SAC, Mountmellick SAC or Slieve Bloom Mountains SAC. There will be no impact on the conservation interests of these European sites. There will be no impact from a development of this nature on bird species within either the River Nore SPA or the Slieve Bloom Mountains SPA – regard being had to the separation distances involved. The only European site which could potentially be impacted by the grid connection is the River Barrow and River Nore SAC – surrounding as it does the

route of the grid connection on all four sides, and being connected to it by a number of surface water features. Whilst the separation distance as the crow flies is 4.3km at its closest – the connection via surface water is considerably longer – the River Nore being some 11km downstream of the grid connection route (via the Ballyroan Stream) and the River Barrow being some 15.5km downstream of the grid connection route (via the Triogue River) which flows through the town of Portlaoise.

9.6.4. The qualifying interests of the River Barrow and River Nore SAC (Site code 002162) are as follows-

- Estuaries.
- Mudflats and sandflats not covered by seawater at low tide.
- Reefs.
- Salicornia and other annuals colonising mud and sand.
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*).
- Mediterranean salt meadows (*Juncetalia maritimi*).
- Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation.
- European dry heaths.
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels.
- Petrifying springs with tufa formation (Cratoneurion).
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles.
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*).
- *Vertigo moulinsiana* (Desmoulin's whorl snail).
- *Margaritifera margaritifera* (Freshwater pearl mussel).
- *Austropotamobius pallipes* (White-clawed crayfish).
- *Petromyzon marinus* (Sea lamprey).
- *Lampetra planeri* (Brook lamprey).

- *Lampetra fluviatilis* (River lamprey).
- *Alosa fallax fallax* (Twaite shad).
- *Salmo salar* (Salmon).
- *Lutra lutra* (Otter).
- *Trichomanes speciosum* (Killarney fern).
- *Margaritifera durrovensis* (Nore freshwater pearl mussel).

9.6.5. The Conservation objectives for the 12,373ha site, are to maintain the favourable conservation condition of Desmoulin's whorl snail, White-clawed crayfish, Estuaries, Mudflats and sandflats, Salicornia, Killarney fern, Water courses of plain to montane levels, European dry heaths, Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels, Petrifying springs: and to restore the favourable conservation condition of Sea lamprey, Brook lamprey, River lamprey, Twaite shad, Atlantic salmon, Atlantic salt meadows, Otter, Mediterranean salt meadows, Nore freshwater pearl mussel, Old sessile oak woods, and Alluvial forests. The status of the Freshwater pearl mussel is currently under review, to establish whether a site-specific conservation objective is set for this species.

9.6.6. The primary protection measure employed for European sites was avoidance, when examining potential routes for the grid connection. Other measures to protect this SAC include best practice during the construction phase – to ensure that no silt or other contaminants enter watercourses. There are no in-stream works proposed as part of this development. Watercourses along the route have been identified, and directional drilling will be used to channel cables beneath watercourses where it is not possible to contain cables within the bridge/culvert structures. The Coillte Teoranta submission included an Outline Cable Route Construction Methodology which explains by way of text, drawings and photographs, how construction of the grid connection would be carried out – with particular regard to the need to prevent contamination of watercourses. Construction site management measures include cessation of works during heavy rainfall; works to be carried out under supervision of a suitably-qualified environmental engineer/ecological clerk of works; consultation with the NPWS and IFI; and use of silt traps/check dams/bunds/"silt-busters" to

prevent polluting matter entering watercourses; and limited lengths of trench being open at any one time.

- 9.6.7. I note that the closest point of the grid connection route is some 11.0km upstream of the Nore River and some 15.5km upstream of the Barrow River. Having regard to these significant separation distances, and to the protection measures which would be employed to protect watercourses during construction, I would be satisfied that the potential for impact on aquatic species is not significant
- 9.6.8. An NIS was submitted as part of the wind farm application at Cullenagh Mountain. The Appropriate Assessment Screening Report, which accompanies the Coillte Teoranta submission in the instance of this referral, addresses the issue of in-combination effects with other plans and projects – particularly the development of the wind farm itself at the same time. The grid connection route is located almost entirely within forest tracks within the larger wind farm site (1.5km). There are no in-combination effects which could impact on European sites – as work within the wind farm site would be subject to the same degree of construction and environmental management as the grid connection route, and works within the wind farm site are limited to the excavation of a trench 1.2m deep in limited lengths – almost entirely within existing forest roads.
- 9.6.9. I note that there is only one 0.5km stretch of road where the grid connection route and the construction haul route for the wind farm coincide – and this on a wide stretch of the R425 Regional Road to the north of Sheffield crossroads.
- 9.6.10. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, the grid connection route as described, individually or in combination with other plans or projects would not be likely to have a significant effect on European site no. 002162, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not, therefore, required.

10.0 Recommendation

Having regard to the High Court judgments set out in *Ó Grianna & Ors. v An Bord Pleanála* and *Daly v Kilronan Windfarm Ltd. and By Order, Derrysallagh Windfarm Ltd*, I recommend an Order as follows:

WHEREAS a question has arisen whether laying a 15.4km underground 38kV grid connection to link the permitted Cullenagh Mountain wind farm (Laois County Council Ref. 13/268 – ABP Ref. PL 11.242626) to an existing Electric Ireland sub-station at Abbeyleix Road, Portlaoise, Co. Laois, is or is not development and is or is not exempted development;

AND WHEREAS Laois County Council, requested a declaration on the said question from the Board on the 20th day of May, 2016;

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 & 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 16 & 26, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) Schedules 5 & 7 of the Planning and Development Regulations, 2001, as amended,
- (e) the decision of the High Court in *Ó Grianna & Ors. v. An Bord Pleanála*, Record Number: 2014 No. IEHC 632,
- (f) the decision of the High Court in *Daly v Kilronan Windfarm Ltd. and, by Order, Derrysallagh Windfarm Ltd.*, Record Number: 2016 No. 372 MCA, and
- (g) the documentation on file and the report of the Planning Inspector, which included screening for environmental impact assessment and appropriate assessment:

AND WHEREAS An Bord Pleanála has concluded that–

- (a) the said underground cable come within the scope of sections 2(1) and 3(1) of the Act (as amended), and constitutes development,
- (b) the proposed 38kV underground connection between Cullenagh Mountain wind farm site and the Abbeyleix Road, Portlaoise sub-station forms part of a wind farm project for which environmental impact assessment was required and for which EIA of the full extent of the grid connection was not carried out as part of the assessment of that project, and comes within the scope of section 4(4) of the Planning and Development Act, 2000, as amended, and
- (c) the current legal position applicable to grid connections for wind farm developments which has been set down in High Court judgements in the Ó Grianna case and the Daly and Kilronan/Derrysallagh case:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the Planning and Development Act, 2000 (as amended), hereby decides that the laying of underground 38kV cables to link the permitted Cullenagh wind farm development (Laois County Council Permission Ref. 13/268 – ABP Ref. PL 11.242626) to the existing Electric Ireland sub-station at Abbeyleix Road, Portlaoise, is development and is not exempted development – regard being had to most recent case law relating to grid connections for wind farms.

Michael Dillon,

Planning Inspector.

11th April 2018.