



An  
Bord  
Pleanála

## Inspector's Report RL19.RL.3503

### Question

Whether the provision of a connection between the 110kv substation of the Yellow River Windfarm granted under PA0032 & the National Grid is or is not development or is or is not Exempted Development.

### Location

Rhode, Co Offaly.

### Declaration

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

PLA016.

Applicant for Declaration

Peter Sweetman, Stephen Carroll &  
Joanne Addie

Planning Authority Decision

N/A.

### Referral

Referred by

Offaly County Council.

Owner/ Occupier

Green Wind Energy (Wexford) Ltd.

Observer(s)

None.

Date of Site Inspection

N/A.

Inspector

Bríd Maxwell.

## 1.0 Site Location and Description

1.1. The referral relates to the Yellow River Windfarm Site which straddles the R400 Regional Road linking Rochfortbridge in Co Westmeath with Rhode in County Offaly, to the north of Rhode Village. Whilst the windfarm site is located entirely within County Offaly it is located close to the borders with Counties Meath and Westmeath. The windfarm site which extends to 1,002 hectares (development footprint 20.6 hectares) comprises a number of discrete parcels of farm land, cut away raised bog and forestry. The electrical compound for the windfarm is located within the Rhode Business Park beside the Rhode peaking power plant and directly abuts the Derryiron 110kv substation approximately 1km to the north of Rhode Village.

## 2.0 The Question

2.1. The question as referred is “***Whether the provision of a connection between the 110kv substation of the Yellow River Windfarm granted under PA0032 & the National Grid is or is not development or is or is not Exempted Development.***”

## 3.0 Planning Authority Declaration

### 3.1. Declaration

The Planning Authority opted to refer the question to the Board in accordance with Section 5(4) of the Planning and Development Act 2000.

## 4.0 Planning History

**19PA0032** Application to An Bord Pleanála under Section 37E of the Planning and Development Act 2000. The application sought a 15 year permission for the development of a 29 no. turbine windfarm. By order dated 3 June 2014 The Board granted 10 year permission for the development of a 29 no. turbine wind farm. Condition 5 states that “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.”

Condition No 13(a) requires that cables within the site shall be laid underground.

I refer the Board to Section 3.1 of the Inspector’s report which sets out the principal elements of the proposed development and which includes at bullet point 5:

*“33kv underground cables linking turbines with the electrical compound, 110kv underground cable linking the electrical compound with the adjacent Derryiron 110kV substation. Total of 25.7km of underground cables.”*

## 5.0 Policy Context

### 5.1. Development Plan

The Offaly County Development Plan 2014-2020 refers.

### 5.2. Natural Heritage Designations

5.2.1 No part of the windfarm site is within or immediately abutting an area of nature conservation. The closest European site is Raheenmore Bog SAC which is approximately 4km distant. The European sites within 15km of the windfarm site are:

- Lough Ennel SAC (Site Code 000685) (c10km)
- Lough Ennel SPA (Site Code 004040) (c10km)
- River Boyne and River Blackwater SAC (Site code 002299) (c18.5km)
- River Boyne and River Blackwater SPA (Site Code 004232) (c14km)
- Raheenmore Bog SAC (Site Code 000582) (c4km)

- Mount Heavy Bog SAC (Site code 002342) (c16km)
- Split Hills and Long Hill Esker SAC (Site Code 001831)(c14km)
- The Long Derries SAC (Site Code 000925)(c14km)

5.2.2 There are also a number of Natural Heritage Areas in the vicinity including Woodtown Bog (c14km), Nure Bog (c12km), Milltownpass Bog (c8km), Cloncrow Bog [New Forest] (c5km), Blackcastle Bog (c2km), Molerick Bog (c10km), Daingean Bog (c10km), Rahugh Ridge [Kiltober Esker] (c7km), Ardan Wood (c10km), Murphy's Bridge Ridge Esker (c7km) Royal Canal (c10km), Grand Canal (c3km).

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1 The referral to Offaly County Council by Peter Sweetman and Associates on behalf of Peter Sweetman, Stephen Carroll and Joanne Addie is summarised as follows:

- As per judgement of Peart J in O' Grianna and others v An Bord Pleanála [2014] IEHC 632 "*the wind farm and its connection in due course to the national grid is one project, neither being independent of the other*"
- Section 4 of the Act of 2000 as amended by Environment (Miscellaneous Provisions) Act 2011 states:

*"(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."*

- The connection between the 110kv substation of the Yellow River windfarm is not a standalone project. As the Yellow River Windfarm is a project that required Environmental Impact Assessment therefore the connection between the 110kV substation of the Yellow River Windfarm is development and is not exempted development.

## 6.2. Planning Authority Response

6.2.1 The Planning Authority did not comment on the referral.

## 6.3. Owner/ Occupier's Response

6.3 The submission by Jennings O Donovan Consulting Engineers on behalf of Green Wind Energy (Wexford) Ltd. is summarised as follows:

- The red line boundary of the SID application to the Board (PA0032) includes two 110kV underground cable options from the windfarm's substation to the boundary of the existing Derryiron 110kV substation.
- The grid connection clearly and unambiguously formed part of the application.
- The Board is referred to drawings 4909-PL-S2-108 & 4909-PL-S2-201 which detail the connection and cabling required between the proposed substation and the existing substation.
- Table provided sets out references to the grid connection method detailed as set out in the planning application and the EIS.
- An Bord Pleanála made its decision to grant permission for the development on 3<sup>rd</sup> June 2015 and the decision included the connection to the National Grid.
- Therefore, the question as to whether the grid connection is or is not exempted development simply does not arise. The entire development the subject matter of 19PA0032 is now authorised.
- Notably the referring party applied to the High Court to judicially review the Board's decision to grant permission and one of the grounds of challenge was that the issue of grid connection had not been considered in reference to O Grianna. (Carrol Addie & Sweetman v An Bord Pleanála Greenwind Energy (Wexford) Ltd and others Record Number 2015/475 JR)
- Request for declaration under Section 5 is without any factual or legal basis. It is plainly vexatious as the issue was previously brought before the high court and subsequently withdrawn.
- Request the Board to dismiss the referral.

## 6.4. Further Responses

6.4.1 The referrer's response is summarised as follows:

- As the application did not include an application for the connection to the National Grid, An Bord Pleanála could not and did not grant it. The newspaper advertisement states:

*“The development will comprise thirty-two (32) electricity generating wind turbines with a hub height of up to 110 metres and a rotor diameter of up to 113 metres and an overall height of up to 166 metres, hardstandings, a 110kv substation containing two (2) control buildings, an electrical compound and a waste water holding tank, nine (9) watercourse crossings, temporary construction compound, a permanent meteorological mast, a new access road off the R400 Roundabout at Rhode and upgraded access roads, associated site roads, drainage and site works.”*

- Assertions of the referral being vexatious represent a deliberate attempt to deceive the Board.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### Section 2(1)

““works” includes any act or operation of construction, excavation, demolition, extension, alterations, 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 of 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 be regulations provide 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 limit 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.”

## 7.2. **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”.

## 7.3. **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) Restrictions on Exemption**

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
  - (ii) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
  - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,



- (vii) 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.
- (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) comprise 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 the procedures for the purposes of giving effect to the Council Directive.”

#### 7.4. Case Law

**O Grianna** (and others) v An Bord Pleanála (and others) Record L 2014 No 2014 No 19 JR; 2014 No 10 COM.

High Court judgement on judicial review of a permission granted on appeal by the Board for a development comprising 6 wind turbines and associated infrastructure in County Cork. The High Court judgement, quashing the Board's decision, was based on the conclusion that the windfarm and grid connection constitute one 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.

7.5 **RL3375** Board determined that 220m of 20kv underground cable forming part of grid connection at Raragh, Kingscourt, Co Cavan is development and is exempted development.

**RL3408 RL3409 RL3410 RL3411** The Board determined that the development of grid connection from Crory / Lodgewood substation to Ballycadden windfarm is development and is not exempted development. I note that this determination found that the development came within the scope of Article 9(1) (a) of the Regulations as their construction contravened a condition of the planning permission for the relevant windfarms.

**RL 2789** The Board determined that the laying of a 110kv underground electricity cable forming the grid connection to windfarm at Knockacummer Co Cork is development and is exempted development.

**RL2778** The Board determined that the provision of 10.2km of underground cable forming the grid connection of windfarm at Loughaun North, Tulla, Co Clare to existing substation at Tooreen Ennis Co Clare is development and is exempted development.

**RL2786** The Board determined that the undergrounding of two sections of 38kV line of which planning permission was granted under planning ref. no. 06/2278 to lay overhead is or is not development or is or is not exempted development from windfarm at Glenmore East to ESB 38kV station at Newcastlewest, Co. Limerick

**RL3377 RL3401** The Board determined that the provision of a 20kv electrical connection between Cnoc windfarm and Ballybeagh 38kv substation, Tullaroan, Co Kilkenny is development and is exempted development.

## 8.0 Assessment

### 8.1. Is or is not development

8.1.1. The question before the Board is “whether the provision of a **connection between the 110kv Substation of the Yellow River Windfarm granted under PA0032 and the National Grid** is or is not development or is or is not Exempted Development.”

The details provided by the within the documentation for permission for the windfarm PA0032 and as referenced in response to the referral sets out the grid connection mechanism comprising 110kv underground cabling to the Derryiron 110kv substation. Two indicative routes are identified. The preferred option via service corridor extends to 146m whilst the second alternative via estate road is 585m.

8.1.2. The relevant statutory provisions in the case are set out at section 7 above. In addressing the primary question of whether the works are development, I note that having regard to the nature of the proposal, namely the installation of underground cable connecting the electrical compound, to be located within the Rhode Business Park, to the adjoining Derryiron 110kV substation, it is evident, by reference to the broad definition of works set out in Section 2(1) and 3(1) of the Act that the proposal does constitute development for planning purposes. The focus, therefore, is on whether or not the proposed development constitutes exempted development.

### 8.2. Is or is not exempted development

8.2.1. As regards Section 4(2)(a)(i) of the Act, and the Regulations made thereunder, the relevant class of development is Class 26, Part 1 Schedule 2 of the Planning and Development Regulations, as amended. This refers to “*The carrying out by any electricity undertaking of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking. I am satisfied*”

*that the proposal is “a development consisting of the laying underground of cables for the purposes of the undertaking”.*

- 8.2.2. On the requirement for the development to be carried out by an “*undertaker authorised to provide an electricity service*” I refer to Article 3(3) of the regulations which states that an electricity undertaking means an undertaker authorised to provide an electricity service. The Electricity Regulation Act 1999 provides a definition as follows:

*“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.”*

- 8.2.3 I note the broad definition of “statutory undertaker” provided within the Planning and development Act 2000 as follows

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

*(b)Provide, or carry out works for the provision of, gas, electricity or telecommunications services,” .*

In light of these definitions, I am satisfied that Green Wind Energy (Wexford) Ltd. falls within the category of statutory undertaker on foot of its authorisation under the Planning Act to construct a windfarm that is a project for the provision of electricity. On this basis I am satisfied that the proposed development falls within the scope of Class 26.

### **8.3. Restrictions on exempted development**

- 8.3.1 Section 4(4) of the Act essentially de-exempts any development which attracts a requirement for Environmental Impact Assessment (EIA) or Appropriate Assessment (AA). In relation to EIA, the development of a connection between the 110kv substation of the yellow River Windfarm and the National Grid is not a prescribed class of development for the purposes of EIA. In consideration of screening for EIA, I note that by reference to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended, having regard to the limited nature

and scale or works involved, the provision of a connection between the 110kv substation and the national grid is not likely to have significant effects on the environment. In the context of the O Grianna judgement using the definition of the windfarm and the grid connection as a combined project, as the grid connection formed part of the original application 19PA0032 is not a change or an extension which will trigger a further EIA (as per paragraph 3 Schedule 5 Part 2 of the Regulations).

- 8.3.2 As regards Appropriate Assessment, the application 19PA0032 included a Screening Report which concluded that arising from separation distances from European sites, the windfarm would not have any impact on habitats forming conservation interest of SACs or avian species indicated as conservation interests within SPAs. In considering the nature of the development subject of the referral a connection between the 100kv Substation and the National Grid and by reason of the intervening distance to the European Sites in the vicinity it can be concluded that the proposed development would not be likely to give rise to significant effects. I consider it reasonable to conclude therefore on the basis of the information provided on 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 significant effect on European sites in the vicinity and a stage 2 Appropriate Assessment is not therefore required. On the basis of the foregoing I am satisfied that the development does not fall within the scope of Section 4(4) of the Act.
- 8.3.3 On the issue of Article 9 (1) De-Exemptions, I am satisfied that the development does not fall within the scope of the de-exemptions. In this regard I note that having regard to the limited extent and duration of the works the development will not have an impact on traffic safety and will not give rise to obstruction of road users. 9(1)(a)(iii).
- 8.3.4 I am satisfied that the development does not impact on archaeological or other sites of interest that are subject of preservation / conservation objectives Article 9(1)(a)(vii) and (ViiA)
- 8.3.5 My conclusions in relation to AA and EIA above refer in the context of Article 9(1)(a) (viiB) and 9(1)(c).

8.3.6 As regards 9(1)(a)(i) and the matter of condition 5 of the Boards permission as follows:

*“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.”*

I note that the condition, which is not uncommon in its use does not disallow exempted development and provides for the relevant consents and requirements to comply with EIRGRID / ESB standards. On the basis of the foregoing, I am satisfied that the development does not fall within the scope of the Article 9 (1)de-exemptions.

## 9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the provision of a connection between the 110kv substation of the Yellow River Windfarm granted under PA0032 and the National Grid is or is not development or is or is not exempted development:

**AND WHEREAS Peter Sweetman and Stephen Carroll and Joanne Addie, Peter Sweetman and Associates 14, Postnet 113 Lower Rathmines road. Dublin 6** requested a declaration on this question from Offaly County Council and the said Council referred the question to the Board on the 2<sup>nd</sup> day of September 2016:

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

- (a) Section 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,
- (c) Parts 1 and 3 of Schedule 2 to the Planning and Development

Regulations, 2001, as amended,

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The provision of a connection between the 110kv substation of the Yellow River Windfarm and the national grid 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) of the 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 Article 9(1)(a)(i), (ii), (v), (vii), (viiA) or (viiB) or Article 9(1)(c) of the of the Planning and Development Regulations 2001,as amended,

**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 connection between the 100kv substation of the Yellow River Windfarm granted under PA0032 and the National Grid is development and is exempted development.

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Bríd Maxwell

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Planning Inspector

16<sup>th</sup> March 2017