



An
Bord
Pleanála

Inspector's Report ABP-309223/231/233/-21

Question

Whether the following is or is not development and is or is not exempted development:

- (1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick,
- (2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River, and

(3) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River.

Planning Authority	Limerick City & County Council & Cork County Council
Planning Authority Ref.	EC60/20
Referral	
Referred by	Limerick City & County Council (ABP-309231-21) Patrick Cremins (ABP-309223-21 & ABP-309283-21)
Respondents	Limerick City & County Council Patrick Cremins
Date of Inspection	13 th July, 2021
Inspector	Kevin Moore

1.0 The Question

1.1. Three separate section 5 referrals have been made to the Board in relation to underground electricity cable grid connections and associated works relating to wind farm development within the administrative areas of Limerick City & County Council and Cork County Council.

1.2. The question put to the Board is:

Whether the following is or is not development and is or is not exempted development:

(1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick,

(2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River, and

(3) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River.

1.3. ABP Ref. 309223-21 relates for the most part to connections and works that fall within County Cork and the other two parts fall within County Limerick to which ABP Ref. 309231-21 and ABP-309283-21 refer. The same question referring to all of the connections and works was originally posed to Limerick City & County Council while the connections and works within County Cork were highlighted in the section 5 referral to Cork County Council.

2.0 Site Location / Description

- 2.1 The route of the underground cable runs from Mauricetown Wind Farm in south County Limerick in a westward direction and then southwards along the edge of local roads. It then enters Dromdeeveen Wind Farm north of the county border with County Cork, the location in which Tullylease 38kV switching station is sited, and continues southwards through the wind farm lands, across the county border with Cork, and south-westwards through adjoining lands in the townland of Rowls Langford North before the routing once again follows local roads in a southwards and south-westwards direction. The underground cable is then routed south-eastwards along the edge of the R576 regional road and then westwards for a short section along edge of the R578. The route then traverses lands to the south of the regional road as far as Glenlara 110kV substation.

3.0 Limerick City & County Council Considerations

- 3.1. Limerick City and County Council referred the same question to the Board (ABP-309231-21) as that of Patrick Cremins. The planning authority noted relevant planning history. It was acknowledged that a declaration had been issued under reference EC34/20 that the laying of underground cables in an area designated as a Special Protection Area, from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, County Limerick to the substation at Dromdeeveen for grid connection was development and was exempted development. It was further noted that this declaration was appealed to An Bord Pleanála and was being processed under reference ABP-308071-20.

4.0 Cork County Council Considerations

- 4.1. Cork County Council sought further information from the referrer and that this request was outside of the statutory period for making such a request. The planning report leading to that request and the Archaeologist's report were

forwarded to the Board. The latter requested an archaeological assessment. The Planner noted that there was no history of a section 5 application for a grid line from Glenlara in County Cork to County Limerick and that there appears to have been no planning application made in respect of a cable along the route shown in the section 5 application drawings. Reference is made to a wide range of planning history, section 5 cases, precedent and case law. The Archaeologist's report was noted. Reference was made to an Ecologist's report which referred to exempted development provisions under the Planning and Development Act and the Regulations and the likely need for Appropriate Assessment as the cable had been laid within a Special Area of Conservation.

5.0 Submission by Patrick Cremins

5.1. The following is submitted from Patrick Cremins:

Planning History

- PL 13.240910 (P.A. Ref. 12/379) – Permission for retention and completion of up to six turbines relating to Mauricetown Wind Farm.
 - From the submitted EIS it is seen that separate permissions were required to be obtained for grid connections.
 - Mauricetown Wind Farm 38kV substation formed part of the permitted wind farm development.
 - No underground electricity cable grid connection works between Mauricetown Wind Farm 38kV substation and Tullylease 38kV substation formed part of the permitted Tullylease 38kV substation in Planning Permission P.A. Ref. 17/388.
 - The permitted Tullylease 38kV substation under Planning Permission P.A. Ref. 17/388 does not detail any electricity cable grid connection from the Tullylease 38kV substation to the electricity cable grid connection running from the Dromdeeven Wind Farm 38kV

substation to the Glenlara 110kV substation in County Cork, crossing the county border at the Glashawee River.

- P.A. Ref. 04/2722 – Permission granted by Limerick County Council for increased dimensions for 7 turbines and an additional 11 turbines, anemometer mast and access tracks. This relates to Dromdeeven Wind Farm.
 - Condition 17 stated:

“No development shall take place until permission has been granted for a transmission line onto the national grid. This grant of permission shall not infer that planning permission shall necessarily be granted for same.

Reason: In the interests of defining the permission and to ensure that the development is not carried out in the absence of a suitable electricity connection.”

The wording is clear and unambiguous. Planning permission is required for grid connections.
 - The developer confirmed with Limerick County Council in a Compliance Submission on 22nd September 2010 that a transmission overhead line connection is not being used for connection to the national grid and that an underground 38kV line had been agreed with ESB Networks for the development.
 - The 38kV underground line runs from the Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork, crossing the county border at the Glashawee River. This route does not correspond with the route permitted by An Bord Pleanála under PL 04.218821 (P.A. Ref. 06/7096), which referenced a 38kV overhead line.

- PL 04.218821 (P.A. Ref. 06/7096) – Permission granted by the Board for erection of 7.4km of 38kV overhead line in the townlands of Cumberduff, Commons North, Tooreen Donnell, Meentiny East, Meenkearagh, Rowls, Shaddock, Rowls Allen, Cummery Connell, Rowls Langford South, Rowls Langford North and Banane, County Cork. This relates to an overhead line from Dromdeeven Wind Farm to Cumberduff townland and was to connect to a further proposed section of 110kV transmission line of some 8km leading from Cumberduff to the existing Glenlara 110kV station.
- Under ABP Ref. 04.RL.3531, the Board confirmed by Declaration that the provision of a 20kV underground electrical connection between Glentanemacelligot wind farm at Glennakeel South, Newmarket, County Cork and Knockacummer wind farm at Meentiny West and Meentiny East, Rockchapel, Kanturk, County Cork; a 110kV underground electrical connection between Knockacummer wind farm and Glenlara substation at Curraduff, County Cork; and a 110kV underground electrical connection between Glenlara substation and Ballynahulla substation, Ballynahulla, County Kerry is development and is not exempted development.
- In all of the above cases, the submissions included Appropriate Assessment Screening Reports or Natura Impact Statements. These determinations were based on submitted measures and were in breach of the judgement of the ECJ. The Inspector's conclusion that the grid connections did not require AA as they were carried out prior to the ECJ judgement was incorrect. As the previous exempted development declarations were similarly incorrect, the Board is not bound by them.
- Under ABP-300536-18, the Board confirmed by Declaration that the provision of an underground electricity cable grid connection from the substation within the Raheenleagh Wind Farm to the Arklow 220kV substation at Coolboy, Arklow, County Wicklow is development and is not exempted development. The Board concluded that the connection

constituted development, the connection comes within the scope of Class 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, and the connection would contravene a condition of Planning Permission 10/2140 and would, therefore, come within the restrictions on exemption as set out in article 9(1)(a)(i).

From the above planning history, it is submitted:

- The authorised status of the underground electricity cable grid connection works is questionable between:
 - (a) Mauricetown Wind Farm 38kV substation and Tullylease 38kV substation,
 - (b) Tullylease 38kV substation to the electricity cable grid connection running from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation, and
 - (c) The Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation.
- This is given that:
 - The Mauricetown Wind Farm requires in each case that separate planning permissions be obtained for grid connections,
 - Condition 17 of P.A. 04/2722 relating to Dromdeeveen Wind Farm does not facilitate/permit underground electricity cable grid connection works to the grid connection which runs from the Dromdeeveen Wind Farm 38kV substation to the Glenlara substation,
 - The Mauricetown Wind Farm 38kV substation (permitted under PL 13.240910) does not facilitate/permit any underground electricity cable grid connection works between the Mauricetown Wind Farm 38kV substation and Tullylease 38kV substation,

- The Tullylease 38kV substation (permitted under P.A. Ref. 17/338) does not facilitate/permit any underground electricity cable grid connection works between the Tullylease 38kV substation and the Mauricetown Wind Farm 38kV substation permitted under PL 13.240910,
 - The Tullylease 38kV substation (permitted under P.A. Ref. 17/338) does not facilitate/permit any underground electricity cable grid connection works to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork, and
 - The 38kV underground line running from Dromdeeveen Wind Farm 38kV substation to Glenlara 110kV substation does not correspond with the route as permitted by An Bord Pleanála under PL 04.218821.
- Any grid connection associated with the Mauricetown Wind Farm or Dromdeeveen Wind Farm does not form part of their respective planning permissions.
 - The *Wind Energy Development Guidance* indicated the necessity for separate planning applications for grid connections.

Patrick Cremins concludes by submitting that the underground cable connection works come within the scope of sections 2(1), 3(1), 4(4), 177U, and 182A of the Planning and Development Act and Articles 3, 9(1)(viiB), and 9(1)(a)(i) of the Planning and Development Regulations.

It is further submitted that the planning authority can proceed to decide the part of the underground electricity cable grid connection works between Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation and from Tullylease substation to the Glenlara 110kV substation, subject to consideration of EIA and AA to the extent necessary, because the works were constructed after the judgements of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* and *Patrick Daly v. Kilronan Wind Farm Limited*.

It is additionally submitted that the planning authority can proceed to decide the part of the underground electricity cable grid connection works from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation, subject to consideration of EIA and AA to the extent necessary, because the works were constructed before the judgements of the High Court in *O'Grianna (and others) v. An Bord Pleanála (and others)* and *Patrick Daly v. Kilronan Wind Farm Limited*, and An Bord Pleanála's recent Declaration under 04.RL.3531, which referenced judgements of the ECJ as being declaratory of the law.

Patrick Cremins concluded by requesting that the grid connection works constitute development that is not exempted development.

6.0 Responses to the Referral

6.1. Reirk Energy Limited

The following is submitted;

- Regarding whether the provision of:
 - (a) the underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick is or is not development and is or is not exempted development, and
 - (b) the underground electricity cable grid connections and associated works from the Tullylease 38kV substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork, as far as the County border at Glashawee River is or is not development and is or is not exempted development,

these works are not a matter for Reirk Energy Limited.

- The underground electricity cable connecting the Dromdeeveen 38kV substation to the Glenlara 110kV substation has been in situ and

energised since 2011. It is an ESB Networks asset and is an integral part of the ESB distribution network.

- These underground works were classed as exempted development under Class 26 Schedule 2 Part 1 of the Planning and Development Regulations. The works were carried out in consultation with Limerick County Council as part of the planning compliance for Planning Permission 04/2722.
- Condition 17 of Planning Permission 04/2722 related to a 'transmission line'. Reirk Energy Limited confirmed to Limerick County Council by letter of 23rd December 2009 that a transmission line is not being used and that an underground 38kV line had been agreed with ESB Networks. As a transmission line was not being used, the requirement in Condition 17 was no longer relevant as the works were exempted in accordance with Class 26.
- Limerick County Council requested Reirk Energy Limited to provide them with drawings of the underground cable route. A compliance submission was made to the Council dated 22nd September 2010 and included a drawing detailing the route of the underground cable.

6.2. Mauricetown Wind Farm

The following is submitted:

- Regarding the underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick:
 - The matter was dealt with in a decision from 31st March 2021 by An Bord Pleanála under ABP-308071-20 with a decision that the development in question is development and is exempted development.

- The existing section 5 Declaration cannot be the subject of a further declaration at any variance to the existing declaration when the underlying facts and circumstances remain as they were at the time the original declaration was made. Reference is made to the High Court decision *Narconon Trust v An Bord Pleanála (2000) IEHC 25*.
- The Board does not have jurisdiction to determine this appeal, given the absence of any change in relevant facts or planning circumstances.
- Regarding the underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River:
 - The matter of the cable works associated with the connection of the Tullylease 38kV switching station to the existing distribution network is included within Planning Permission 17/338 issued by Limerick City and County Council in 2017.
- Regarding the underground electricity cable grid connections and associated works from the Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River:
 - The matter of the 38kV cable that forms part of the pre-existing electricity distribution network is not a matter related to Mauricetown Wind Farm. It is the understanding of Mauricetown Wind Farm that the cable that is referred to has formed a part of the electricity distribution network and has been in continuous operation since 2011.

7.0 Statutory Provisions

7.1 Planning and Development Act 2000 (as amended)

PART I – Preliminary and General

Section 2(1)

In this Act, except where the context otherwise requires—

“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.

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3

3.—(1) In this Act, “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.

Section 4

4. (2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

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

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described) ...

(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.

PART XAB – Appropriate Assessment

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.

7.2. Planning and Development Regulations, 2001 (as amended)

PART 2 - Exempted Development

Article 3(3)

In these Regulations, except where the context otherwise requires -

“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 – ...
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act, ...
 - (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any

works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies, ...

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000 ...

(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 Exempted Development – General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development by statutory undertakers</i> Class 26</p> <p>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.</p>	

8.0. Relevant Case Law

8.1. I note the following judgements:

- *Narconon Trust v An Bord Pleanála* (2019/16/JR)
- *O’Grianna v. An Bord Pleanála* [2014] IEHC 632
- *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308
- *ECJ Case C-323/17 People over Wind v Coillte*, ECLI:EU:C:2018:244

9.0 Other Referrals

9.1. ABP Ref. RL3531

The Board determined that the provision of a 20kV underground electrical connection, between Glentanemacelligot wind farm at Glennakeel South, Newmarket, County Cork and Knockacummer wind farm at Meentiny West and Meentiny East, Rockchapel, Kanturk, County Cork; a 110kV underground electrical connection between Knockacummer wind farm and Glenlara sub-station at Curraduff, County Cork; and a 110kV underground electrical connection between Glenlara sub-station and Ballynahulla sub-station, Ballynahulla, County Kerry was development and was not exempted development.

The Board noted that the three sections of the grid connection to which this referral refers were the subject of previous determinations by the planning authority and, in one case, also on appeal by An Bord Pleanála. In all of these cases, the submissions included Appropriate Assessment Screening reports or Natura Impact Statements, which took into account the provision of mitigation measures which were intended to avoid or reduce the impacts of the development on a number of European sites.

The Board concluded:

(a) *The laying of the subject underground cables constituted the carrying out of works, and therefore constitute development as defined in the Planning and Development Act 2000, as amended;*

(b) *The documentation submitted on file (including the submission by RPS Group Limited, on behalf of Brookfield Renewables) confirmed that the content of the previous submissions seeking Section 5 declarations in relation to the subject grid connections, under planning authority file reference numbers D238/15, D257/10 (An Bord Pleanála reference number 04.RL.2789) and D247/16, had included Appropriate Assessment Screening Reports (also cited in the documentation submitted as Natura Impact Statements) that concluded, on the basis of the implementation of mitigation measures, that the development in question would not have significant effects on certain European sites;*

(c) *Having regard to the judgement of the European Court of Justice in case C-323/17, such measures appear to the Board to be measures that were intended to avoid or reduce the harmful effects of the development on the European sites concerned, and accordingly could not be taken into account in screening for Appropriate Assessment, and in so far as they had been taken into account in previous referral determinations, were incorrectly so taken into account;*

(d) *In the absence of these measures, An Bord Pleanála cannot be satisfied, beyond reasonable scientific doubt, that the development that is the subject matter of this referral would not have had significant effects on the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code:004161), the Lower River Shannon Special Area of Conservation (Site Code:002165) and the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code:002170), in the light of the conservation objectives and qualifying interests of these European sites, and accordingly considers that appropriate assessment is required in relation to the development the subject of this referral. Therefore, the provisions of section 4(4) of the Planning and Development Act, 2000, as amended, apply, and the development is not exempted development.*

9.2. ABP-300536-18

The Board determined that the provision of an underground electrical cable connection from the substation within Raheenleagh Wind Farm to the Arklow 22kV substation at Coolboy, Arklow, Co. Wicklow, was development and was not exempted development.

This decision was quashed. 2020 No 622 JR refers.

WHY WAS THIS QUASHED? WAS IT NARCONON?

10.0 Planning History

10.1 I note the following planning history:

Mauricetown Wind Farm

ABP Ref. PL 13.240910 (P.A. Ref. 12/379)

A 10 year planning permission was granted by the Board for retention and completion of the construction, operation and decommissioning of up to six number wind turbine generators, the construction of a meteorological mast, electrical substation, underground electrical cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks, and ancillary services at Glenduff, Darrery and Coolnanoglash, in Ballagh, County Limerick. An EIS and NIS accompanied this application.

EC16/59 Section 5 Referral

Limerick County Council determined that the laying of an underground MV ducting and cabling linking existing and proposed substations at Glenduff, Dromdeeveen and Mountplummer Co. Limerick is development and is exempted development.

ABP-308071-20 - Referral

The Board determined that the laying of underground cables in an area designated as a Special Protection Area, from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, County Limerick to the substation at Dromdeeveen for grid connection is development and is exempted development. The Board concluded that the works specifically come within the scope of Class 26 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001, as amended, and, therefore, constitute exempted development.

Tullylease Switching Station

P.A. Ref. 17/338

Planning permission was granted by Limerick County Council for the construction of a single storey control building and an electrical switching station compound, including electrical equipment plinths, access track, underground cable works and ancillary infrastructure at Dromdeeveen, Ballagh, County Limerick. The substation is located within the Dromdeeveen Wind Farm site area and the drawings refer to the development as an ESNB switching station.

Dromdeeveen Wind Farm

P.A. Ref. 04/2722

Permission was granted by Limerick County Council for increased dimensions for 7 turbines and an additional 11 turbines, anemometer mast and access tracks relating to Dromdeeveen Wind Farm. An EIS accompanied this application.

Condition 17 stated:

"No development shall take place until permission has been granted for a transmission line onto the national grid. This grant of permission shall not infer that planning permission shall necessarily be granted for same.

Reason: *In the interests of defining the permission and to ensure that the development is not carried out in the absence of a suitable electricity connection."*

I note a letter dated 22nd September 2010 was submitted to Limerick County Council relating to the planning conditions imposed by the Council and how Reirk Energy Ltd. intended to satisfy the conditions. In relation to Condition 17, the following was submitted:

"Condition 17 - *No development shall take place until permission has been granted for a transmission line onto the national grid. This grant of permission shall not infer that planning permission shall necessarily be granted for same.*

Reirk Response of 23rd December 2009; Reirk Energy Ltd. confirms that a transmission overhead line connection is not being used for the connection to the National Grid. An underground 38kV line has been agreed with ESB Networks from this development.

Additional Response; Drawings of the 38kV underground line as requested in Limerick Co. Co. letter of 28th January 2010 are included in Enclosure no. 5."

Overhead Transmission Line

PL 04.218821 (P.A. Ref. 06/7096)

Permission granted by the Board for erection of 7.4km of 38kV overhead line in the townlands of Cummerduff, Commons North, Tooreen Donnell, Meentiny East, Meenkearagh, Rowls, Shaddock, Rowls Allen, Cummery Connell, Rowls Langford South, Rowls Langford North and Banane, County Cork. This relates to an overhead line from Dromdeeven Wind Farm to Cummerduff townland and

was to connect to a further proposed section of 110kV transmission line leading from Cumberduff to the existing Glenlara 110kV station.

11.0 Assessment

11.1. The Question of Development

11.1.1 The question before the Board relates to the laying of underground electricity cables under lands. Such works would include acts of construction and excavation in accordance with the definition of 'works' as set out in section 2 of the Planning and Development Act. The carrying out of these works would occur on, in, and over land and would, therefore, constitute 'development' in accordance with the meaning of 'development' as set out in section 3 of the Planning and Development Act.

11.2. The Question of Exempted Development

11.2.1 ***The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick***

I first note the section 5 Declaration by Limerick County Council under Ref. No. EC16/59. The planning authority issued its decision on 2nd February 2016. This related to the laying of an underground MV ducting and cabling linking existing and proposed substations at Glenduff, Dromdeeven and Mountplummer Co. Limerick. The application included an Appropriate Assessment Screening Report. It was determined by the planning authority that this constituted development which was exempted development. It was concluded that the proposed works came within the scope of Class 26 of Part 1 of Schedule 2 of the Planning and

Development Regulations. This Declaration went unchallenged and the underground ducting and cabling were laid.

I then acknowledge the relatively recent decision of the Board under Ref. ABP-308071-20. The Inspector noted that the referrer at that time was seeking a determination in relation to the same works that were identical in substance to those outlined in EC16/59. The Board determined that the laying of underground cables in an area designated as a Special Protection Area, from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, County Limerick to the substation at Dromdeeveen for grid connection is development and is exempted development. It was concluded that the works came within the scope of Class 26 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001.

I note the submissions by Patrick Cremins and Limerick City & County Council in the current referrals. The drawings in these submissions showing the grid connection routing for this section of the grid connections and works present as identical in substance to those previously considered by Limerick County Council under EC16/59 and by the Board under ABP Ref. 308071-20. Both the planning authority and An Bord Pleanála had determined that these works constitute development that is exempted development.

Further to the above, I draw the attention of the Board to 2019/16/JR – *Narconon Trust v An Bord Pleanála*, in which a determination by the Board of a section 5 of identical substance to a previous unchallenged section 5 determination was quashed. In this judgement, it was considered that to permit a challenge to a previously unchallenged section 5 declaration via the route of questions, identical in substance, despite no change in planning facts or circumstances is unreasonable and would set at naught the requirements of section 50 of the Planning and Development Act 2000, as amended. It was determined that to permit such practice would undermine the concept of legal certainty.

I note for the Board that I have reviewed the details of both the current section 5 referral and those of the previously determined section 5 Ref. EC16/59 to the planning authority and to An Bord Pleanála under ABP Ref. 308071-20. I am satisfied that no change in planning facts or circumstances have arisen since the determination of EC16/59 or ABP Ref. 308071-20. It is apparent that this is a section of grid connection which has previously been considered by the planning authority and by the Board. Revisiting this section of grid connection, where circumstances have not altered in any material manner and where the routing remains the same, is entirely unreasonable. It is reasonable, therefore, to conclude that this section of the grid connection and the associated works constitute development that is exempted development.

11.2.2. *The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation*

I note Planning Permission 17/338 granted by Limerick County Council for an electrical switching station compound at Dromdeeveen, Ballagh, County Limerick. This is understood to be the Tullylease substation to which Patrick Cremins refers, which is sited within the Dromdeeveen Wind Farm site area and is an ESB Networks switching station. From the details provided in Planning Application 17/338, it is apparent that the proposed development included underground cable works, including those connecting to an existing underground 38kV export cable within the wind farm lands. This clearly relates to the laying of underground cable within the Dromdeeveen Wind Farm site. This application was subject to a screening for appropriate assessment by the planning authority and the underground cables the subject of this planning application formed part of the development the subject of the grant of planning permission. The applicant's response to a request for further information clarified that the proposed development was not a substation but was a switching station required to

facilitate the connection of a separate wind farm substation to be located in the townland of Glenduff to the national grid.

The applicant's AA Screening description of the project clarified that the proposal included the installation of underground grid connection cables to connect substations in the townlands of Dromdeeveen and Glenduff to the national grid through an existing on-site underground cable. This screening concluded that there were not likely to be any significant effects on the Natura 2000 network of sites and appropriate assessment was not required. The planning authority granted permission for the proposed development and did not require the submission of a Natura Impact Statement. It may reasonably be concluded that this switching station and associated underground cabling has been subject to planning permission and the issues relating to appropriate assessment were considered accordingly by the planning authority. The decision of the planning authority was not appealed to An Bord Pleanála.

It is apparent that the laying of underground cables clearly formed part of the development proposal for the switching station in the vicinity of Dromdeeveen wind farm site. Planning permission was granted and due consideration was given in that application to effects on Natura 2000 sites. It is reasonable, therefore, to conclude that this section of the grid connection and the associated works have been the subject of a planning application and a permission was subsequently issued.

11.2.3. *The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation.*

Exempted Development Provisions

Article 6(1) of the Planning and Development Regulations, 2001, as amended, states that 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. I draw the attention of the Board to Column 1 of Class 26 of Part 1 of Schedule 2: *'Exempted Development – General'* of the Regulations. This refers to *'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'*. There are no conditions or limitations within Column 2 of that class. I am satisfied that the laying of the underground cabling relating to this section of the grid connection from Dromdeeveen Wind Farm to Glenlara substation comprises *'development consisting of the laying underground of...cables...for the purposes of the undertaking'*.

I acknowledge that it is a requirement of this class that the development be carried out by an *"undertaker authorised to provide an electricity service"*. I note Article 3(3) of the Regulations. It states that an electricity undertaking means *"an undertaker authorised to provide an electricity service"*. I further note there is no statutory definition to clarify what 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".

I acknowledge that this definition refers to holders of a licence or authorisation. Notwithstanding this, it is clear that the term *"electricity undertaking"* can apply to *"any person"* engaged in generation, transmission, distribution or supply of electricity.

The definition of “*Statutory Undertaker*” as provided in section 2 of the Planning and Development Act 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”. This can reasonably be understood to include the developers of Dromdeeveen Wind Farm as the developer / owner of a wind farm that comprises a project for the provision of electricity as authorised under the Planning Act.

Restrictions on Exempted Development

Article 9(1)(a)(i) of the Planning and Development Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would contravene a condition attached to a permission issued under the Act or be inconsistent with any use specified in a permission under the Act.

I note Planning Permission 04/2722 issued for Dromdeeveen Wind Farm. This was a permission granted by Limerick County Council for increased dimensions for 7 turbines and an additional 11 turbines, anemometer mast and access tracks relating to Dromdeeveen Wind Farm. Condition 17 stated:

“No development shall take place until permission has been granted for a transmission line onto the national grid. This grant of permission shall not infer that planning permission shall necessarily be granted for same.”

Reason: *In the interests of defining the permission and to ensure that the development is not carried out in the absence of a suitable electricity connection.”*

This condition is clear and unambiguous. It is understood from it that the wind farm was to be connected to the national grid by way of a transmission line.

I note the permission issued under ABP Ref. PL 04.218821 (P.A. Ref. 06/7096). This related to the erection of 7.4km of 38kV overhead line in the townlands of Cummerduff, Commons North, Tooreen Donnell, Meentiny East, Meenkearagh, Rowls, Shaddock, Rowls Allen, Cummery Connell, Rowls Langford South, Rowls Langford North and Banane, County Cork. It was an overhead line from Dromdeeven Wind Farm to Cummerduff townland and it was to connect to a further proposed section of 110kV transmission line leading from Cummerduff to the existing Glenlara 110kV station. This was a permission issued for a transmission line that was intended to serve as the connection for the wind farm to the national grid.

Having regard to the understanding of Condition 17 of Planning Permission 04/2722, it is clear that permission was required to be granted for the grid connection for this wind farm and this was required to be a transmission line. This condition did not allow for any other approval, agreement or other consent procedure to be employed. The Board will note that section 2(1) of the Planning and Development Act states: *'permission' means a permission granted under section 34, 37G or 37N, as appropriate.* This condition removed the opportunity for the grid connection and associated works to be undertaken as exempted development pursuant to Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations.

Having regard to the above considerations, I am satisfied to conclude that the provision of underground electricity cable grid connections and associated works from the Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation would materially contravene Condition 17 of Planning Permission 04/2722 and, therefore, could not be considered to constitute exempted

development by reference to Article 9(1)(a)(i) of the Planning and Development Regulations.

11.2.4. Appropriate Assessment

I note that the route of the grid connections the subject of the referrals traverses both the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area and the Blackwater River (Cork/Waterford) Special Area of Conservation.

The conclusions drawn from the above assessment are as follows:

- (a) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick were subject to two referrals, to Limerick County Council and An Bord Pleanála. In both instances, it was determined that the connections and works were development and were exempted development.
- (b) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation were subject to a grant of planning permission under planning authority reference 17/338.
- (c) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation come within the scope of Class 26, Part 1 of Schedule 2 of the Planning and Development Regulations, as amended. However, these connections and works contravened condition number 17 of planning register reference number 04/2722 and, therefore, such connections and

works come within the restrictions on exemption set out in article 9(1)(a)(i) of the Planning and Development Regulations

With regard to (a), an Appropriate Assessment Screening Report was included with the first referral which was to the planning authority. The revisiting of this section of the grid connection and associated works, where circumstances have not altered in any material manner and where the routing remains the same, is unreasonable. The matter of the removal of exempted development status of this section of the grid connection, based upon a need for appropriate assessment, where an appropriate assessment screening was undertaken, and where decisions have previously been made which determined the grid connection constituted exempted development, cannot reasonably be revisited.

With regard to (b), it is apparent that the permitted development under Planning Permission 17/338 included underground cable works, including those connecting to an existing underground 38kV export cable within the wind farm lands, which relates to the laying of underground cable within the Dromdeeveen Wind Farm site. This is understood to be the underground cable and associated works the subject of the current referrals. Planning Application 17/338 was subject to a screening for appropriate assessment by the planning authority and it is understood that the underground cables the subject of this planning application formed part of the development subject to the grant of planning permission. It may reasonably be concluded that planning permission has been granted for this section of underground cabling the subject of the referrals. It did not seek to, and did not avail of, any exempted development provisions under the Planning and Development Act.

With regard to (c), I note that the grid connection and associated works from Dromdeeveen Wind Farm to Glenlara substation were constructed in 2011 and prior to the judgements of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* 2014 IEHC 632 and *Patrick Daly v. Kilronan Wind Farm*

Limited and, by order, Derrysallagh Wind Farm Limited 2017 IEHC 308, as well as being prior to the decision of the European Court of Justice in *Case C-323/17 People over Wind v Coillte*, ECLI:EU:C:2018:244. The grid connection works took place within the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area and the Blackwater River (Cork/Waterford) Special Area of Conservation. Therefore, the works would have had direct effects on these European sites, with proposed works including the digging of trenches, the laying of cables, the crossing of watercourses, etc. There is no understanding if mitigation measures were required and employed, such as avoiding works within waterbodies, preventing substances entering watercourses, and avoiding known locations of invasive plant species. Furthermore, there is no knowledge that the laying of the grid connection for this section was subject to a Stage 2 appropriate assessment. I consider that it can reasonably be concluded that the Board could not be satisfied, beyond reasonable scientific doubt, that the development that is the subject matter of this section of the referrals would not have had significant effects on the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code:004161) and the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code:002170), in the light of the conservation objectives and qualifying interests of these European sites. Accordingly, it can be considered that appropriate assessment would be required in relation to the development the subject of this section of the referrals. Therefore, the provisions of section 4(4) of the Planning and Development Act, 2000, as amended, apply, and this section of the grid connection would not be exempted development.

Note: I acknowledge the Board's decision in relation to Ref. RL3531 and its reference to *C-323/17 People over Wind v Coillte*, ECLI:EU:C:2018:244. The Board noted that the three sections of the grid connection to which that referral referred included Appropriate Assessment Screening reports or Natura Impact Statements, which took into account the provision of

mitigation measures which were intended to avoid or reduce the impacts of the development on a number of European sites. I note the following:

- The Board's decision in ABP-308071-20 post-dated the ECJ judgement;
- The Tullylease switching station was carried out having acquired planning permission; and
- The underground electricity cable grid connections and associated works from the Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation have not been subject to any appropriate assessment screening or appropriate assessment.

11.2.5.Environmental Impact Assessment

With regard to the underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick, I note again that these were subject to two previous referrals and the connections and works were determined to be developments that were exempted development. I acknowledge the case law referenced by Patrick Cremins in his submissions to the Board and I particularly note that the Board's decision under ABP-308071-20 came after the decisions of the High Court in *O'Grianna (and others) v. An Bord Pleanála (and others)* 2014 IEHC 632 and *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* 2017 IEHC 308. Further to this, I acknowledge once again the decision in *Narconon Trust v An Bord Pleanála* 2019/16/JR. There has been no determination which required this section of the grid connection and associated works to be subject to EIA. There have been no material changes in the circumstances relating to this section of grid connection and the routing remains the same. It is reasonable, therefore, to conclude that this section of the grid connection and associated works would not require

environmental impact assessment, leading to de-exempting the works and requiring the seeking of planning permission.

With regard to the underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeven Wind Farm 38kV substation, I again note that this development was subject to planning permission (Ref. 17/338). Furthermore, it is noted that the development of that electrical switching station compound was not found to be a class of development for the purposes of Part 10 of the Planning and Development Regulations. It may reasonably be determined that environmental impact assessment was not required for that previously permitted development.

With regard to the underground electricity cable grid connections and associated works from the Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation, I note that this grid connection would form an integral part of the Dromdeeven Wind Farm development. This wind farm development was a 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, with Condition 17 of Planning Permission 04/2722 requiring permission to be granted for a transmission line onto the national grid. Therefore, the grant of permission did not include these grid connection works the subject of the current referrals and EIA for these works was not carried out as part of that planning application.

In the context of the above, I note the judgements of the High Court in respect of *O’Grianna v. An Bord Pleanála* [2014] IEHC 632 and *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308 as follows:

In *O’Grianna v. An Bord Pleanála*, delivered on 12th December, 2014 (after this grid connection was laid), the High Court quashed the decision of the Board in granting planning permission for a wind farm in County Cork on the grounds of ‘project-splitting’ and held that the Board had failed to ensure that the grid connection had been considered as part of the Environmental Impact Assessment process prior to the granting of permission for the wind farm. This judgement effectively held that the wind farm and the grid connection constituted a single project, and that both elements together would have to be subject to EIA in order to comply fully with the terms of the Environmental Impact Assessment Directive. As the grant of permission for Dromdeeven Wind Farm required a separate permission for the grid connection, it is reasonable to ascertain that the cumulative impact of the wind farm in conjunction with the grid connection was not assessed as part of the wind farm planning application.

The judgement of the High Court delivered on 11th May, 2017 in respect of *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* provides further and greater clarity on the matter and can be considered to be an authoritative statement of the law as it applies. The judgement includes:

‘In the light of the decision of Peart J. in O’Grianna & Ors. v. An Bord Pleanála, the grid works must be regarded as an integral part of the project as a whole and the assessment of the grid works is to be made in the context of the entire project, as must the assessment of the application for the turbines and works associated with them. That is not to say that a separate EIA will always be required with regard to the grid works and I adopt the dicta of Haughton J. in his judgment in Sweetman v. An Bord Pleanála & Ors. in that regard.

However, as the grid works are part of an overall project, and an EIA is required for the overall project, an environmental assessment must be carried out of the entire project, and, therefore, no part of the project, and

ipso facto no individual part treated as a standalone element, can be exempt from planning. This emerges from the European jurisprudence . . .'

The judgement further states:

'As a matter of European law the assessment of whether the grid connection works can be treated as exempted development is one that must be considered in the context of a reading that best achieved the aims and objectives of the EIA Directive. I consider that on account of the fact that the grid works cannot be lawfully separated from the project as a whole, that to treat the grid works as exempt fails to give effect to this principle'.

I conclude that, having considered the available information, including the judgements of the High Court in *O'Grianna v. An Bord Pleanála* and *Patrick Daly v. Kilronan Wind Farm Limited* and, by order, *Derrysallagh Wind Farm Limited*, in order to give proper effect to the requirements of the EIA Directive in this instance, given that Dromdeeven Wind Farm was previously subject to EIA and as the relevant planning application made no provision for an EIA of the subject grid connection / cabling works, the works relating to this section of the referrals constitute development which necessitates EIA or environmental assessment. This is premised upon the determination in *Patrick Daly v. Kilronan Wind Farm Limited* "that the grid works cannot be lawfully separated from the project as a whole, that to treat the grid works as exempt fails to give effect to this principle'. Therefore, they cannot be considered to comprise exempted development given the provisions of section 4(4) of the Planning and Development Act.

12.0 CONCLUSION AND RECOMMENDATION

I recommend as follows:

WHEREAS a question has arisen as to whether:

- (1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick,
- (2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River, and
- (3) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River.

is or is not development and is or is not exempted development:

AND WHEREAS the said questions were referred to An Bord Pleanála by Limerick City & County Council on the 14th day of January, 2021 and by Patrick Cremins on the 19th day of January, 2021:

AND WHEREAS An Bord Pleanála, in considering these referrals, had particular regard to:

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,

(d) the planning history of the site, in particular Planning Permissions PL 13.240910, 04/2722, and 17/338, the declaration of Limerick County Council under section 5 of the Planning and Development Act relating to Planning Authority Reference EC 16/59, and the decision of An Bord Pleanála relating to ABP-308071-20, and

(i) the report of the Inspector:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the laying of an underground electricity cable under lands constitutes 'development' for the purposes of the Planning and Development Act, and
- (b) the laying of underground cables from Mauricetown Wind Farm to the substation at Dromdeeveen for grid connection comes within the scope of Class 26 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001, as amended,
- (c) the laying of the underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation was subject to planning permission under P.A. Ref. 17/338,
- (d) The laying of the underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border comes within the scope of Class 26, Part 1 of Schedule 2 of the Planning and Development Regulations, as amended,
- (e) The provision of the said underground electricity cable grid connection and associated works relating to the connection from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation would contravene condition number 17 of planning register reference number 04/2722 and

would, therefore, come within the restrictions on exemption set out in article 9(1)(a)(i) of the Planning and Development Regulations, and

- (f) The provision of the said underground electricity cable grid connection and associated works relating to the connection from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation would come within the scope of section 4(4) of the Planning and Development Act 2000, as amended, in that it requires an appropriate assessment and an Environmental Impact Assessment:

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that

- (1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick are development and are exempted development,
- (2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River are development and are exempted development, and
- (3) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River are development and are not exempted development:



Kevin Moore

Senior Planning Inspector

2nd September, 2022

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