

**An  
Bord  
Pleanála**

## **Inspector's Report ABP-309223-21**

### **Question**

Whether the underground electricity cable grid connections and associated works from the Cork County/Limerick County border at the Glashawee River to the Glenlara 110kV substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38kV substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeven Wind Farm and the Glenlara 110kV substation is or is not development and is or is not exempted development.

**Planning Authority**

Cork County Council

**Planning Authority Ref.**

D/285/20

**Referral**

**Referred by**

Patrick Cremins

**Date of Inspection**

13<sup>th</sup> July, 2021

**Inspector**

Kevin Moore

## **1.0 Introduction**

- 1.1 On 19<sup>th</sup> January 2021, Patrick Cremins referred a question to the Board in accordance with section 5(3)(b) of the Planning and Development Act 2000 (as amended) after no declaration was made by Cork County Council as to whether specified underground electricity cable grid connections and associated works constitute development that is or is not exempted development.

## **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 substation is sited, and continues southwards through the wind farm lands 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. The grid connection is located within County Cork from the county border at the Glashawee River to the Glenlara substation

## **3.0 The Question**

- 3.1 The question before the Board is:

Whether the provision of the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38kV Substation (Co. Limerick) to the electricity cable grid

connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV Substation, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation is or is not development and is or is not exempted development.

#### **4.0 Submission by Patrick Cremins**

- 4.1 Patrick Cremins submits 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)(a)(i) of the Planning and Development Regulations. It is further submitted that they do not come within the scope of sections 172(1) of the Act and Article 6(1) and Class 26 of Part 1 of Schedule 2 of the Regulations. It is submitted that the grid connections and associated works constitute development and are not exempted development.
- 4.2. The referral to the Board included the section 5 application letter to Cork County Council, the completed section 5 application form, and a section 5 Declaration application document.

#### **5.0 Cork County Council Considerations**

I note that 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.

## **6.0 Responses to the Referral**

### **6.1. Reirk Energy Limited**

The submission stated that the underground electricity cable connecting the Dromdeeveen 38kV substation to the Glenlara 110kV substation has been in situ and energised since 2011. It is noted that it is an ESB Networks asset and is an integral part of the ESB distribution network. It is further submitted:

- 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 23<sup>rd</sup> 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 22<sup>nd</sup> September 2010 and included a drawing detailing the route of the underground cable.

### **6.2. Mauricetown Wind Farm**

The following is submitted:

- Mauricetown Wind Farm is not an owner or occupier of any land in County Cork.
- Reference is made to texts derived from the Environmental Impact Statement associated with P.A. Ref. 12/379 (ABP Ref. PL 13.240910). It is submitted that:
  - It is clear and unambiguous that planning consent had been put in place for any elements of the connection works that require planning permission.
  - The notional grid connection route assessed and recorded in the EIS is the constructed grid connection route.
  - None of the conditions attached to Mauricetown Wind Farm permission require planning permission to be obtained for grid connection.
  - The EIS stated that where permission was required it would be applied for. It did not state that planning permission was required and would be sought. The Board did not impose an express planning condition requiring planning permission to be obtained for grid connection.
  - Mauricetown Wind Farm and its grid connection to Tullylease substation is entirely distinguishable from the precedents sought by the referrer where relevant wind farm permissions required planning permission to be obtained for grid connections by way of express planning condition.
- The cable works associated with the connection of the Tullylease 38kV switching station to the existing electricity distribution network is included within planning consent 17/338 issued by Limerick County Council. None of those works are within County Cork.
- The 38kV cable in County Cork that forms part of the pre-existing electricity distribution network is not a matter related to Mauricetown Wind Farm. It is understood that the cable has formed 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—

“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.

#### *Section 5*

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(2) (a) Subject to paragraphs (b) and (ba), a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request under *subsection (1)*, and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request ...

(3) (a) Where a declaration is issued under this section, any person issued with a declaration under *subsection (2)(a)* may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

### 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 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. Case Law**

- 8.1. I note the judgement in relation to *Narconon Trust v An Bord Pleanála* (2019/16/JR). In this judicial review it was determined that the developer had acted on the decision of an unchallenged section 5 determination and an Order of certiorari was granted. The Court of Appeal upheld this judgement.

## **9.0 Planning History**

- 9.1 I note the following planning history:

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.

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

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.

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.

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 22<sup>nd</sup> 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 23<sup>rd</sup> 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 28<sup>th</sup> January 2010 are included in Enclosure no. 5."

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 Dromdeeven, Ballagh, County Limerick. The substation is located within the Dromdeeven Wind Farm site area and the drawings refer to the development as an ESN switching station.

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 leading from Cumberduff to the existing Glenlara 110kV station.

## **10.0 Assessment**

### **10.1 The Question of Development**

10.1.1 The question before the Board relates to the laying of an underground electricity cable 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.

## **10.2 The Question of Exempted Development**

The Board will note my considerations relating to ABP-309283-21 and ABP-309231-21 as they relate to grid connections in County Limerick. These specifically refer to:

- (a) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick,
- (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, and
- (c) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation as far as the Glashawee River on the County Limerick / County Cork border on the approach to Glenlara 110kV substation.

I consider that the underground cable grid connections and associated works within County Limerick constitute development that is exempted development.

Regarding that section of the underground grid connection from the County Cork border with County Limerick as far as Glenlara substation, I first note that Cork

County Council has no record of an application under section 5 of the Planning and Development Act for a grid connection from Glenlara to the County Limerick border. I further note that it has no record of any planning application for a grid connection following a similar route.

I acknowledge the submission from Reirk Energy Limited. Therein, it is submitted that the underground electricity cable grid connection from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation has been in situ and energized since 2011 and is an ESB Networks asset. It is further submitted that the works were classed as exempted development under Class 26 Schedule 2 Part 1 of the Planning and Development Regulations and the works were carried out in consultation with Limerick County Council as part of the planning compliance for Planning Permission 04/2722. Reirk Energy Limited notes Condition 17 of that permission prohibiting development until permission has been granted for a transmission line onto the national grid. I note that it submitted a letter, dated 23<sup>rd</sup> December 2009, to the Council confirming that a transmission line is not being used for connection to the national grid. It was further submitted to the Council that an underground 38kV line had been agreed with ESB Networks. Reirk Energy Limited submits that, as a transmission line was not being used, the requirement contained in Condition 17 was no longer relevant as the works were exempted development in accordance with Class 26. It is further submitted that Limerick County Council requested Reirk Energy Limited to provide drawings of the underground cable route and that a planning compliance submission, dated 22<sup>nd</sup> September 2010, included a drawing detailing the route of the underground cable.

It is apparent from the compliance arrangements between the developer and Limerick County Council that there was a clear understanding of the grid connection arrangements within County Limerick. It is evident, however, that Limerick County Council was not the authority to address grid connection provisions within the administrative area of Cork County Council and could not

have determined development to be exempted development within County Cork. Such authority lay with Cork County Council.

I draw the attention of the Board to ESB Networks submission to the referral ABP-309283-21 which relates to the section of the grid connection from Dromadeeven Wind Farm as far as Glenlara substation. ESB confirmed the submission from Reirk Energy Limited. Furthermore, it is clarified that ESB carried out the connection works in 2010 and 2011 under its statutory authority and it submitted that this was in accordance with the exemption set out in Class 26 of Part 1 Schedule 2 of the Planning and Development Regulations. Furthermore, it was noted that the construction of the circuit was completed prior to the commencement of section 17(1)(b) of the Environment (Miscellaneous Provisions) Act 2011 and prior to the High Court decision in *O’Grianna v An Bord Pleanála* (2014) IEHC 632 in December 2014.

As I have already alluded to earlier, Cork County Council did not issue a declaration under section 5 of the Planning and Development Act determining that the grid connection within County Cork constituted exempted development. Also, planning permission was not sought or issued for the grid connection within County Cork. I submit that the range of planning compliance submissions to Limerick County Council, following the issuing of Planning Permission 04/2722, is not of any particular relevance to the laying of a grid connection within County Cork. I accept that Reirk Energy Limited has provided clear details that the grid connection is in situ, that it has been energized since 2011, and that it is operated by ESB. I note that Cork County Council does not refute this submission. I further note that there is no record of Cork County Council contesting the laying of the grid connection within County Cork, pursuing enforcement measures, requesting the making of a section 5 application, or requiring the making of a planning application. I would find it difficult to determine that such works were undertaken unknown to the local authority, and the Council’s Area Engineer in particular, given the nature of the development,



necessary road works, road crossings, etc. This I accept does not result in any clear understanding that the laying of the grid connection in County Cork by ESB was subject to any formal approval process with Cork County Council. However, I submit that the ESB, as a statutory undertaker, undertook the grid connection with an understanding that it could avail of Class 26 of Part 1, Schedule 2 of the Planning and Development Regulations and proceeded without objection from Cork County Council.

Having regard to the circumstances relating to the laying of the grid connection within County Cork, I consider that it could only reasonably be concluded that the laying of the grid connection within County Cork was undertaken with an understanding that ESB could undertake such works as exempted development at that time in accordance with Class 26 of Part 1, Schedule 2 of the Planning and Development Regulations. This grid connection went unchallenged and has been in situ and energised since 2011.

## **11.0 CONCLUSION AND RECOMMENDATION**

I recommend as follows:

**WHEREAS** a question has arisen as to whether the provision of the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV Substation, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, is or is not development and is or is not exempted development.

**AND WHEREAS** the said question was referred to An Bord Pleanála by Patrick Cremins on the 19<sup>th</sup> day of January, 2021:

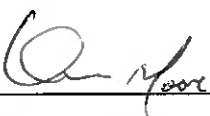
**AND WHEREAS** An Bord Pleanála, in considering this referral, had particular regard to:

- (a) section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) section 3(1) of the Planning and Development Act, 2000,
- (c) section 4(2) of the Planning and Development Act, 2000,
- (d) section 4(4) of the Planning and Development Act, 2000, as amended,
- (e) section 5(3)(a) of the Planning and Development Act, 2000, as amended,
- (f) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (g) Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (h) 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,
- (b) 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 was carried out in compliance with the requirements of Limerick County Council in accordance with Planning Permission 04/2722,
- (c) The laying of the underground electricity cable grid connections and associated works from the Limerick County / Cork County border to the Glenlara 110kV substation in County Cork were undertaken by ESB, a statutory undertaker, in accordance with Class 26 of Part 1, Schedule 2 of the Planning and Development Regulations, and
- (d) The development of the grid connection went unchallenged and has been in situ and energised since 2011:

**NOW THEREFORE** the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that the provision of the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork is development and is exempted development:



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Kevin Moore

Senior Planning Inspector

18<sup>th</sup> January, 2022

