



An
Bord
Pleanála

Inspector's Report ABP-309231-21

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

Limerick City & County Council

Planning Authority Ref.

EC60/20

Referral

Referred by

Limerick City & County Council

Respondent

Patrick Cremins

Date of Inspection

13th July, 2021

Inspector

Kevin Moore

1.0 Introduction

- 1.1 On 14th January 2021, Limerick City & County Council made a submission to the Board seeking a Declaration under section 5(4) of the Planning and Development Act 2000 (as amended) as to whether specified underground electricity cable grid connections and associated works constitute development that is or is not exempted development. This followed an application from Patrick Cremins seeking a Declaration under section 5.

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 Dromdeeven 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.

3.0 The Question

- 3.1 The question before 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.

4.0 Submission by Patrick Cremins

4.1 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 Dromdeeveen 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 Cummerduff, Commons North, Tooreen Donnell, Meentinnny 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 of some 8km leading from Cummerduff 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 Meentinnny West and Meentinnny 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 are 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 Dromdeeven 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 Limerick City & County Council should determine that the grid connection works constitute development that is not exempted development.

5.0 Responses to the Referral

5.1. 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 Dromdeeven 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 Dromdeeven 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.

5.2. 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.

6.0 Statutory Provisions

6.1 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 F42 [*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.

6.2. 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>	

7.0. Case Law

7.1. 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.

8.0 Planning History

8.1 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 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."*

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.”

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.

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 Dromdeeveen 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.

9.0 Assessment

9.1 The Question of Development

9.1.1 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.

9.2 The Question of Exempted Development

9.2.1 *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. This related to the laying of an underground MV ducting and cabling linking existing and proposed substations at Glenduff, Dromdeeveen 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 was laid. I then acknowledge the relatively recent decision of the Board under Ref. 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. 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.

The Board will note that this section of the grid connection route relates to the first section of the connection the subject of the referral now before the Board, namely the underground electricity cable grid connections and associated works

from the Mauricetown Wind Farm 38kV substation to the vicinity of the Tullylease 38kV substation. I do not propose to revisit the issue of whether this does or does not constitute exempted development. The Board's decision is clear on this. There are no material changes that have arisen since this previous decision. It is reasonable, therefore, to conclude that this section of the grid connection and the associated works constitute exempted development.

I note the judgement in relation to *Narconon Trust v An Bord Pleanála* (2019/16/JR) where it was determined that the developer had acted on the decision of an unchallenged section 5 determination and an Order of certiorari was granted. I repeat that this is a section of grid connection which has previously been considered by the planning authority under section 5 of the Planning and Development Act and had been acted on following that decision. It was further considered by the Board. Revisiting this section of route, where circumstances have not altered in any material manner and where the routing remains the same, is entirely unreasonable.

9.2.2. *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 substation is understood to be Tullylease switching station sited within the Dromdeeveen Wind Farm site area and to be an ESB Networks switching station. I note that the Patrick Cremins submission refers to this as the Tullylease 38kV substation. From the details provided in the planning application it is apparent that the proposed development included underground cable works, including those connecting to existing underground 38kV export cable within the wind farm lands. This clearly relates to the laying of underground cable within the Dromadeeveen 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 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 Dromdeeeveen 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. 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.

It is apparent that the laying of underground cables associated with the switching station in the vicinity of Dromadeeeveen wind farm site have previously been subject to planning permission and consideration was given to effects on Natura 2000 sites.

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

I first note the submission from Reirk Energy Limited. Therein, it is submitted that the underground electricity cable grid connection from the Dromdeeeveen 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 23rd 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 the Council requested Reirk Energy Limited to provide drawings of the underground cable route and that a planning compliance submission, dated 22nd September 2010, included a drawing detailing the route of the underground cable.

I have no record of any determination from the planning authority that the underground electricity cable grid connections and associated works from the Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation constituted exempted development under Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations. I acknowledge that from the Glashawee River to Glenlara substation the route would lie within County Cork and not within the administrative area of Limerick City & County. I further acknowledge the range of planning compliance submissions to the planning authority following the issuing of Planning Permission 04/2722. It is apparent that the planning authority requested a drawing detailing the route of the underground cable after Reirk Energy Limited set out its proposals in its letter dated 23rd December, 2009 and Reirk Energy Limited, in its submission dated 22nd September 2010, met its obligations to provide a drawing detailing the route of the underground cable. I have no reason to refute the submission from Reirk Energy Limited that the grid

connection is in situ, has been energized since 2011, and is an ESB Networks asset.

I submit that it appears that Limerick County Council requested the routing of the proposed underground cable and did not oppose the grid connection proposal. It is reasonable to determine, based on the submissions received by Limerick County Council from Reirk Energy Limited and the planning authority's requests and determinations, that the underground grid connection works were undertaken in good faith. I am not aware that this grid connection routing proposal was previously the subject of any challenge. Furthermore, it is apparent that the planning authority was clearly aware of the proposals for the grid connection and accepted that a transmission line was not being provided. It also knew that an underground line had been agreed with ESB Networks. It solely requested routing details in response to the applicant's submission that it was not providing a transmission line. I submit that Reirk Energy Limited could reasonably have understood from the planning authority that its proposals within County Limerick were acceptable and these works were carried out accordingly. The planning authority, in submitting the section 5 referral to the Board, has not provided any details to contest this issue.

Having regard to the above, I conclude that Reirk Energy Limited, in addressing the conditions attached with Planning Permission 04/2722, did so with regard to Condition 17 by way of its submission of 23rd December 2009 and that it met with the planning authority compliance requirements by submitting a drawing showing the routing and explaining how it was providing a grid connection. I, therefore, consider that it has been determined that this component of the wind farm development within County Limerick was understood to have been met in accordance with the requirements set out in Planning Permission 04/2722.

10.0 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 substations 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 question was referred to An Bord Pleanála by Limerick City & County Council on the 14th 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, 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, and

- (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 was carried out in compliance with the requirements of Limerick County Council in accordance with Planning Permission 04/2722:

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,
- (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 development and is exempted development:



Kevin Moore

Senior Planning Inspector

18th January, 2022