



Elgin Energy Services Limited

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The Secretary
An Board Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG-	<u>052898 - 22</u>
ABP-	
11 MAY 2022 o.k	
Fee: €	<u>220</u> Type: <u>cheque</u>
Time:	<u>10-28</u> By: <u>Paula Cernia</u>

10th May 2020

Re: Referral of Section 5 Declaration

Roscommon County Council Reference: DED 514

Dear Sir/Madam,

Elgin Energy Services Limited with offices at 4th Floor, Hambleden House, 19-26 Pembroke St Lower, D02 WV96, has prepared this Referral to An Board Pleanála, pursuant to Section 5 (3)(a) of the Planning and Development Act 2000 (as amended). This Referral relates to a Section 5 Declaration issued by Roscommon County Council on the 14th of April 2022, in respect of the construction of an underground 10kV medium voltage cable within the public road connecting the permitted onsite substation at Castlerea in Roscommon (Planning Reference: PD/17/295) to the existing ESB substation in Castlerea, Co. Roscommon.

Enclosed is the prescribed fee of €220 along with a copy of the Declaration issued by Roscommon County Council. This Referral sets out the rationale for the proposal being deemed exempted development. We would request that An Board Pleanála review the Section 5 Declaration as issued by Roscommon County Council and to issue a determination that the proposed works constitute exempted development.

The Question

Whether works consisting a proposed underground 10kV grid connection to connect a permitted onsite solar farm substation to the existing 387kV Castlerea substation is or is not development, constitutes a material change of use, and is or is not exempted development.

Company Number:	549474
VAT Number:	3288813IH
Registered Address:	19-26 Pembroke Street Lower, Dublin D02 WV96
Directors:	Ronan Kilduff, Tony Kilduff, Joe Walsh, Dermot Kelleher, David Meehan

Proposed Development

The route of the proposed underground cable will connect the permitted onsite substation to the existing ESB substation in Castlerea, Co. Roscommon. Approximately 0.95km of the proposed 1.14km route is within the public road corridor. The remaining 0.19km is within lands under the ownership of the solar farm landowner. The proposed cable exits the permitted solar farm site onto a local road in Rathleg, running in a southwest direction for approximately 800m before turning west to enter the existing ESB substation in Castlerea.

Works shall be carried out to the appropriate ESB specifications and will include any required site clearing, excavations, laying ducts and joint bays, backfilling and reinstatement. The area will be checked for existing underground services, particularly near the public road, and the area around any services will be carefully dug to avoid impacts to the service. The duct will be placed in the trench and the appropriate aggregate material will be backfilled and compacted in layers. The reinstatement and surface finish shall be agreed in advance with the local authority, ESB and the solar farm landowner. All reinstatement within public roads will be equal to or better than the original surface.

On the 15 March 2022, Elgin Energy Services Limited applied for a Section 5 Declaration of exempted development under the definitions as per the Planning and Development Act 2000 (as amended).

As part of the application, an Ecological Impact Assessment including an Appropriate Assessment Screening Report was presented where it was identified that the closest Natura 2000 sites were Bellanagare Bog SAC [000592] and Bellanagare Bog SPA [004105] located 3.5km upstream of the Solar PV farm at Rathleg, Castlerea. No potential scale or magnitude of any effect was found likely to be significant alone or in combination with other projects or plans. The Appropriate Assessment Screening Report concluded that the development is not likely to have a significant impact on a Natura 2000 site and thus there is no requirement for an EIA or AA Stage 2.

Overview of Legislative Provisions / Justification for Exemption

This section sets out the legislative provisions that illustrate the proposed development to be development, which is exempted development:

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."

"Structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and (a) where the context so admits, includes the land on, in or under which the structure is situate,"

Section 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 structure or other land.

Section 4(1) sets out developments that shall be exempted development for the purposes of the Act.

Schedule 2 of the Planning and Development Regulations 2001, (as amended) includes classes of development which are considered exempted development. Class 26 is directly relevant to this proposed development and refers to:

"the carrying out by any statutory undertaker authorised to provide an electricity service of development consisting of the laying of underground mains, pipes, cables or other apparatus for the purposes of the undertaking".

Elgin Energy Services Limited have been granted a planning permission for the construction of the solar farm under the Planning and Development Act 2000 and accordingly falls within the broad definition of a statutory undertaker under s3(1).

Section 3(1) Planning and development Act 2000 defines "statutory undertaker" as 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;

Article 6(1) of the Planning and Development Regulations, 2001 states that:

"Subject to Article 9 development of a class specified in Column 1 and part 1 of Schedule 2 shall be exempted development for the purpose of the Act."

Grounds of Referral

Endanger public safety by reason of traffic hazard or obstruction of road users

Roscommon County Council has concluded that the proposed development *"has the potential to endanger public safety by reason of a traffic hazard or obstruction of road users"* and as such, the development cannot be considered exempt under article 9(1)(a)(iii). It is respectfully submitted, for the reasons set out in Table 1 below, that this condition would not be breached.

Table 1 below is a reproduction of the restrictions in various Articles/Sections set out in Planning Regulations/Acts and includes an analysis as to the applicability of the restriction to the proposed development. Although article 9(1)(a)(iii) was the only condition identified by the Council as being

breached, we have set out further information in respect of the other conditions for the information of An Board Pleanála:

Table 1: Planning Regulations/Acts- Exemption Criteria Analysis

Article / Section	Article Description	Commentary
9(1)(a)(i)	contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act	The proposed development will not contravene any related planning conditions.
9(1)(a)(iii)	endanger public safety by reason of traffic hazard or obstruction of road users,	The proposed development will be subject to a road opening licence from Roscommon County Council and will be subject to a Traffic Management Plan to be agreed in advance of any works with Roscommon County Council.
9(1)(a)(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,	Accordingly, it is envisaged that works pursuant to class 26 under a public road may still be exempt and so not cause a traffic hazard even though the works will be in the road
9(1)(a)(vi)	interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,	The proposed development will be an underground cable and will be installed in accordance with ESBs cable specification requirements. There will be no impact in the context of the landscape sensitivities identified over.
9(1)(a)(vii)	Consist of or comprise the excavation, alteration or demolition of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan (LAP) for the area in which the development is proposed or, pending the variation of a development plan or LAP, or the making of a new development plan or LAP, in the draft variation of the development plan or LAP, or the draft development plan or draft LAP.	The proposed development will be an underground cable and will be installed in accordance with ESBs cable specification requirements. There will be no impact in the context of the geological, archaeological and other sensitivities identified.
9(1)(a)(viiA)	Consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.	The proposed development was considered as part of the wider solar project in a Cultural Heritage Assessment prepared by John Cronin & Associates. This assessment was submitted to Roscommon County Council in support of the planning application for the solar project. This assessment concluded that the development poses a slight indirect impact on the setting of a ringfort located to the southwest of the proposed development. An archaeological buffer was designed around the ringfort and the proposed development would not involve the excavation, alteration, or demolition of the ringfort.
9(1)(a)(viiB)	Where the planning authority or the Board is competent authority for the purposes of Appropriate Assessment (AA) and the development would require an AA because it would be likely to have a significant effect on the integrity of a European Site;	The proposed development was considered in combination with the other elements of the solar project wider solar project in a Screening for Appropriate Assessment prepared by RPS Group. This assessment was submitted to Roscommon County Council in support of the planning application for the solar project. This assessment concluded that the solar project (including the underground cable) will not delay or hinder the maintenance or restoration to favourable conservation conditions, the qualifying interests for which the SACs has been designated or the special conservation interests for which the SPA have been designated. The project will not result in a significant adverse effect on NATURA 2000 sites either alone or in combination with other projects.

Article / Section	Article Description	Commentary
9(1)(a)(viiC)	Where the development would be likely to have an adverse impact on an area designated as a Natural Heritage Area (NHA) under the Wildlife Act;	The proposed development was considered as part of the wider solar project in an Ecological Impact Assessment prepared by RPS Group. This assessment was submitted to Roscommon County Council in support of the planning application for the solar project. This assessment concluded that the solar project (including the underground cable) will not result in any adverse impact on an area designated as a Natural Heritage Area (NHA) under the Wildlife Act.
9(1)(a)(x)	consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility	The proposed development will not result in the fencing or enclosing or obstructing access as described.
9(1)(a)(xi)	Obstruct any public right of way	The proposed development will not result in any obstruction of public right of way.
9(1)(a)(xii)	consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area	The proposed development is not located within an architectural conservation area or an area specified as an architectural conservation area.
9(1)(c)	Where the development is subject to the Environmental Impact Assessment Directive (i.e. is of a class of project listed in Annexes I or II of the Directive);	The proposed development comprising underground cables as well as the approved solar project it relates to are not project types requiring EIA as set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. This has been established most recently by the High Court in <i>Sweetman V An Bord Pleanála and others (2019 No. 33 JR)</i> .
Section 57 of Planning Act	the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of— (a) the structure, or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.	The proposed development will not materially affect the character of any protected structure.

Having regard to the applicability of Class 26 to the proposed development and the absence of any restrictions as set out in the above table, it is the opinion of Elgin Energy Services Limited that the proposed development is exempted development. This is in line with a decision from An Bord Pleanála (ABP-302895-18).

Response

The applicant respectfully disagrees with the Planning Authority's conclusion to the application and considers that the proposed works constitute exempted development.

The application has stated that a road opening licence will be required prior to the commencement of any works and thus the grant of the licence is subject to a temporary traffic management plan being submitted and agreed with Roscommon County Council.

It is considered that the public will not be endangered through traffic hazards or obstruction of road users and a detailed temporary traffic management plan submitted prior to works will manage any hazards and obstructions.

On this basis, it is requested that An Board Pleanála make a determination that the proposed development does constitute exempted development.

This is in line with a decision from An Bord Pleanála (ABP-307454-20).

Conclusion

We trust you will find the enclosed information sufficient in order to determine the proposed development to be works which are considered "exempted development". If you require any further information, then please do not hesitate to contact the undersigned.

Yours sincerely,



Jack Buggy
Head of Project Delivery

Elgin Energy Services Ltd
4th Floor, Hambleton House
19-26 Pembroke St Lower
Dublin 2 D02 WV96

ROSCOMMON COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACT, 2000 (as amended)

SECTION 5 - DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

NOTIFICATION OF DECISION

REGISTERED POST

Elgin Energy Services Ltd.,
4th Floor, Hambleden House,
19-26 Pembroke St. Lower,
Dublin 2 DO2 WV96.

Reference Number: DED 514

Application Received: 21st March, 2022

WHEREAS a question has arisen as to whether works consisting of proposed underground 10Kv grid connection to connect a permitted onsite solar farm substation to the existing 38Kv Castlerea substation – the total length of the route is 1.14km at Rathleg, Castlerea, Co. Roscommon is or is not development or is or is not exempted development.

AND WHEREAS Roscommon County Council, in considering this application, had regard particularly to:

- (a) Sections 2, 3, 4 and 5 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 the Planning and Development Regulations 2001, (as amended).

AND WHEREAS Roscommon County Council has concluded that:

- (a) The proposed development constitutes development as defined in the Planning & Development Act 2000, (as amended) and associated Regulations.
- (b) The proposed development is not exempted development as defined in the Planning & Development Act 2000 (as amended) and associated Regulations.
- (c) The proposed development individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and that the requirement for AA or EIAR does not apply with respect to the current case.

NOW THEREFORE:

By virtue of the powers vested in me by the Local Government Acts 1925 – 2019 and Section 5(2)(a) of the Planning and Development Act 2000 (as amended) and, having considered the various submissions and reports in connection with the application described above, it is hereby declared that the said works consisting of proposed underground 10Kv grid connection to connect a permitted onsite solar farm substation to the existing 38Kv Castlerea substation – the total length of the route is 1.14km at Rathleg, Castlerea, Co. Roscommon constitutes development that is not exempted development as defined within the Planning and Development Act 2000 (as amended) and associated Regulations.

ny person issued with a Declaration under Section 5 of the Planning and Development Act, 2000 (as amended) may, on payment to An Bord Pleanála of the prescribed fee, refer a Declaration for review within 4 weeks of the date of the issuing of the Declaration.

Signed on behalf of the Council:


Administrative Officer,
Planning.

Date: 14th April, 2022

c.c. Tobin Consulting Engineers,
Block 10-4, Blanchardstown Corporate Park,
Dublin 15.

AN BORD PLEANÁLA

11 MAY 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____