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CHEATHARLACH

CARLOW COUNTY COUNCIL

Registered Post

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3<sup>rd</sup> April 2024

Garreenleen Solar Farm Ltd.,  
C/o HW Planning,  
5 Joyce House,  
Barrack Square,  
Ballincollig,  
Cork.

Re: S5.23.41: Declaration on Development & Exempted Development.  
Site Address: Kellistown East, Co. Carlow.  
Proposal: Proposed 110kV underground grid connection cabling between the  
L30535 public road (to the north of the existing Kellis 220kV  
substation) to a line bay in the substation.

A Chara,

Please find attached original copy of Declaration with respect to above application.

If you have any further query, please contact the undersigned at 059-9170346 or  
[planningdevman@carlowcoco.ie](mailto:planningdevman@carlowcoco.ie).

Mise le meas,

Shirley O'Neill,  
Administrative Officer.



<b>AN BORD PLEANÁLA</b>	
LDG-	071583-24
ABP-	
25 APR 2024	
Fee: €	220 Type: Che
Time: 14:39	By: Courier



**Declaration on Development & Exempted Development**  
**Section 5 of the Planning and Development Act 2000 (as amended)**  
**Reg. Ref: SEC5/23/41**

**WHEREAS** a question has arisen as to whether the proposed 110kV underground grid connection cabling between the L30535 public road (to the north of the existing Kellis 220kV substation) to a line bay in the substation, at Kellistown East, Co. Carlow, is or is not development and is or is not exempted development;

**AS INDICATED** on the plans and particulars received by the Planning Authority on 01/12/23 and the Further Information response received by the Planning Authority on 14/03/2024;

**AND WHEREAS** Garreenleen Solar Farm Limited, C/o HW Planning, 5 Joyce House, Barrack Square, Ballincollig, Cork, requested a declaration on the said question from Carlow County Council;

**AND WHEREAS** Carlow County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- (b) Section 177U of the Planning and Development Act 2000 (as amended);
- (c) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended), including Article 9(1)(a)(viiiB) *'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;*
- (d) Class 26 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (e) Planning application register references PL22/163 relating to the site and including approved development which includes a Natura Impact Statement;
- (f) DEHLG *"Guidance for Planning Authorities Appropriate Assessment of Plans and Projects in Ireland"*, which states in Section 2.3 that: *"Any plan or project that is not directly connected with or necessary to the management of a site must be subject to AA of its implications for the Natura 2000 site in view of the site's conservation objectives "if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects" (EC, 2006). The precautionary principle, derived from the EU Treaty and developed in the case law of the ECJ14, is one of the foundations of the high level of protection pursued by EU Community policy on the environment, and underpins the Habitats Directive. Where doubt exists about the risk of a significant effect, an AA must be carried out"*.
- (g) The Appropriate Assessment Screening Report completed by the Planning Authority for the proposal;

**AND WHEREAS** Carlow County Council has concluded that:

- (a) The proposal is development which comes within the scope of Section 3 of the Planning and Development Act 2000 (as amended);
- (b) The proposal does come within the scope of Class 26 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (c) Notwithstanding part (i) in the foregoing, it is considered that the restrictions on exemptions in Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended) would apply i.e. proposal comprises development which requires Appropriate Assessment;

**NOW THEREFORE** Carlow County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the proposed 110kV underground grid connection cabling between the L30535 public road (to the north of the existing Kellis 220kV substation) to a line bay in the substation at Kellistown East, Co. Carlow, Bagenalstown, County Carlow, **is development and is not exempted development.**

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

**Signed:**



\_\_\_\_\_

**Date:** 3/4/24

The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1

24 April 2024

**HW Planning**

5 Joyce House,  
Barrack Square,  
Ballincollig,  
Cork  
P31 KP84

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**Directors:**

Harold Walsh  
Conor Frehill

**Company Reg. No.**  
486211

**Accreditations**  
ISO 9001:2015  
ISO 14001:2015  
ISO 45001:2018

**Re: Carlow County Council Register Reference SEC5/23/41: Request for Declaration under Section 5 of the Planning Act 2000 - whether the proposed 110kV underground grid connection cabling between the L30535 public road (to the north of the existing Kellis 220kV substation) to a line bay in the substation, at Kellistown East, Co. Carlow, is or is not development and is or is not exempted development.**

Dear Sir/Madam,

We act on behalf of Garreenleen Solar Farm Limited in respect of the above Section 5 Request and wish to formally refer the declaration issued by Carlow County Council to An Bord Pleanála for review in accordance with Section 5(3)(a) of the Planning and Development Act 2000 (as amended). We enclose the appropriate fee of €220.

In a declaration dated 3rd April 2024, Carlow County Council determined that the identified works would constitute development that would not come within the scope of exemptions provided under the Planning and Development Regulations 2000 (as amended). By extension, and in their opinion, planning permission would therefore be required. A copy of the declaration is enclosed for reference.

We disagree with the issued opinion of the Council and submit that the nature of the development comes within the scope of the exemption provided under Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and this is not restricted by Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended). The basis for this is set out in detail below.

## 01 Background

Garreenleen Solar Farm Limited are currently advancing plans for the construction and operation of a solar farm at Garreenleen, Bendinstown, Tinnaclash and Ardbearn, Co. Carlow. As part of this, they are finalising grid connection arrangements with EirGrid to allow for the export of renewable energy generated by the project to the national transmission network.

The application for planning permission for the solar farm, support infrastructure and associated ancillary development works was previously made to Carlow County Council under planning

reference 20/143 and was permitted under An Bord Pleanála Reference ABP-307891 on the 28th September 2021.

Pursuant to this, planning permission was obtained from An Bord Pleanála<sup>1</sup> on 2nd November 2022 under section 182A of the Planning and Development Acts (as amended) for a 110kV substation in the townland of Bendinstown and associated 110kV underground cable connection to the existing Kellis 220kV substation. Permission was sought for and obtained to the point at which the underground cabling terminates in the public road at the boundary of the Kellis 220kV substation. Planning permission could not be sought for the final connection to the line bay as the final point of connection within the substation site was not known or identified by EirGrid at that time. It should be noted that while planning permission could not be sought for the remainder of connection to the line bay in the substation, a version of these works were described and assessed in environmental reporting in the SID application as part of a 'one-project' approach.

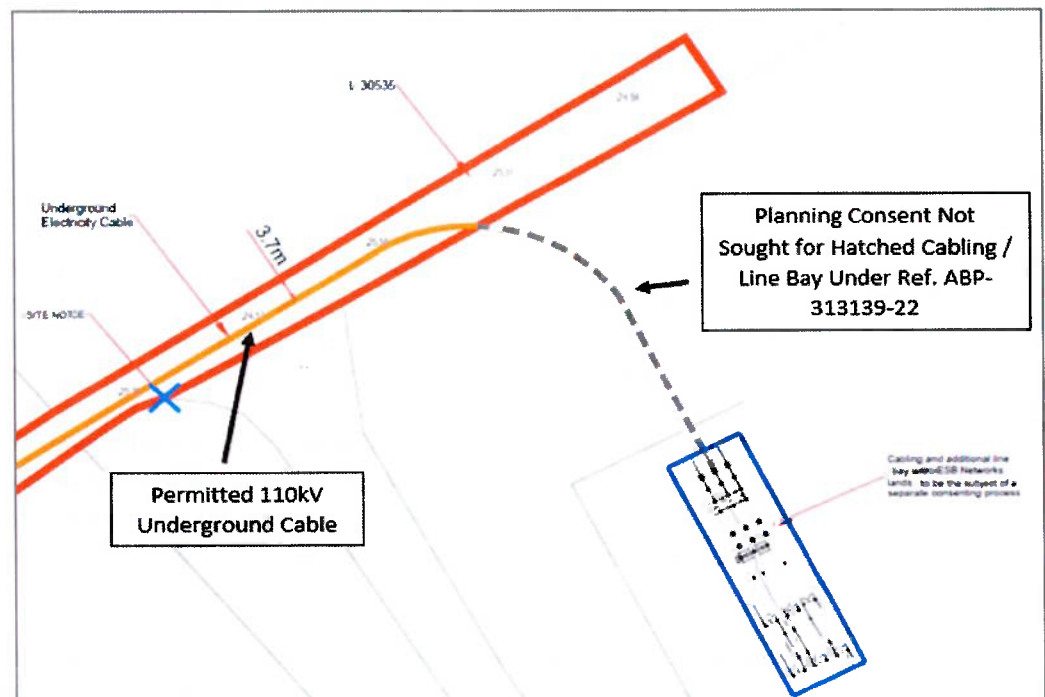


Figure 01: Permitted Context Under Reference ABP-313139-22

The point of final connection in the substation is now known and it is proposed to complete the underground cable connection to the EirGrid allocated line bay within the Kellis 220kV substation. The underground 110kV cabling will extend from the public road to the north and be trenched to the line-bay as per the submitted plans by TLI Group. We consider that these works are exempted development based on the provisions of Schedule 2, Part 1, Class 26 of the Planning and Development Regulations 2001.

<sup>1</sup> Under An Bord Pleanála Reference ABP-313139-22.

## 02 Planning Context

### Planning and Development Act 2000 (as amended)

Under Section 2(1) of the Planning and Development Act 2000 (the Act), the definition of 'works' includes *"any act or operation of construction, excavation, demolition, extension, alterations, repair or renewal and ....."*

Under Section 3(1) of the Act the definition of '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"*.

The Act defines 'statutory undertaker' as follows:

*"means a person, for the time being, authorised by or under any enactment of instrument under an enactment to –*

*Construct or operate a railway, canal, inland navigation dock, harbour or airport;*

*Provide, or carry out works for the provision of, gas, electricity or telecommunications services, or;*

*Provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking".*

### Planning and Development Regulations 2001 (as amended)

Schedule 2, Part 1 of the Planning and Development Regulations 2001 specifies types of development by 'Statutory Undertakers' that is exempted development. This includes Class 26 as follows:

*"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".*

Under Article 3(3) 'electricity undertaking' means *"an undertaker authorised to provide an electricity service"*.

Article 6(1) of the regulations 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 opposite the mention of that class in the said Column 1".*

Article 9(1) establishes restrictions on exemptions stating that *"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, inter alia:

- *"contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;*



- consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaces carriageway of which exceeds 4 metres in width;
- endanger public safety by reason of traffic hazard or obstruction of road users;
- consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, watermain, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31(a) specified in Column 1 of Part 1 of Schedule 2 applies;
- consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest their preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan;
- comprise of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No 2 of 1930) as amended;
- 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;
- if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these regulations) to comply with the procedures for the purposes of giving effect to the Council Directive."

### 03 Decision of the Local Planning Authority

In their declaration dated 3rd April 2024, Carlow County Council concluded that the subject development does not constitute exempted development on the basis of the following:

- (a) The proposal is development which comes within the scope of Section 3 of the Planning and Development Act 2000 (as amended);*
- (b) The proposal does come within the scope of Class 26 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);*
- (c) Notwithstanding part (i) in the foregoing, it is considered that the restrictions on exemptions in Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended) would apply i.e. proposal comprises development which requires Appropriate Assessment;*

#### 04 Assessment

Based on a review of Carlow County Council's internal reports on the Section 5 Request, we note the following:

1. That the Council are satisfied that the applicant qualifies as a 'statutory undertaker' which allows them to avail of a Class 26 exemption in this case;
2. That the Council are satisfied that the subject works fall within the scope of exemptions prescribed in Class 26;
3. That with the exception of a perceived requirement for Appropriate Assessment, the Council have satisfied themselves that there are no other restrictions having regard to Article 9 that would preclude use of Class 26 in this case.

It is therefore evident that the sole basis for Carlow County Council's determination relates to a view that the subject works require Appropriate Assessment.

#### Requirement for Appropriate Assessment

The test under Article 9(1) (viiB) is whether proposed development would require "appropriate assessment because it would be likely to have a significant effect on the integrity of a European site". The report of the Council states (1) that the proposed development is "dependent on approved mitigation measures" to ensure the protection of designated Natura 2000 sites, and (2), implies that because the subject works (or a similar variant therefore) were described and assessed as part of the Natura Impact Statement (NIS) prepared under permitted An Bord Pleanála Reference ABP-307891, then "the proposal may not be screened out for appropriate assessment".

Firstly, it has been clearly demonstrated through the prepared Appropriate Assessment Screening Report by Ecology Ireland that the proposed works are not dependent in any way on bespoke mitigation measures that would trigger a requirement for Stage 2 Appropriate Assessment. The total length of the subject underground cabling is approximately 43 metres to be provided within an existing substation compound. In their own reporting, the Council readily acknowledge that the works themselves are of "limited nature and scale". There is no meaningful assessment of the subject works themselves or how they could conceivably give rise to significant effects on the nearest Natura 2000 site (Slaney River SAC) in the absence of mitigation. We respectfully submit that there is no basis to the statement that the proposed works are reliant on mitigation.

The submitted Appropriate Assessment Screening clearly establishes that separate elements (remote from the subject works) of the cable route under An Bord Pleanála Reference ABP-307891 included watercourse crossings with hydrological connectivity to designated sites with mitigation applied specifically in those cases. As summarised clearly in the screening statement, the subject works differ substantially to this being *"very limited in extent and do not involve the crossing of any watercourse. No bespoke mitigation has been identified as being required in*



*relation to the current proposed works to address any risks likely to result in any significant cumulative or in combination affects to European sites in the wider receiving environment".*

Secondly, and just because a version of the subject works were described and assessed as part of the Natura Impact Statement (NIS) prepared under permitted An Bord Pleanála Reference ABP-307891, this does not preclude the subsequent consideration of exempted development provisions in this case. Planning permission was not sought for the subject works previously as the final means of the connection to Kellis Substation was unknown. They did not form part of the application red-line boundary and the submitted planning application under ABP-307891 made clear that this would be further considered at the appropriate time under a separate statutory process once the final means of connection was known.

The Council's reporting makes very general reference to the 'O'Grianna judgement' as a relevant part of their determination, but no specific commentary is offered on the nature of such applicability here. This judgement dates from 2014 and relates to project-splitting in the context of a completed Environmental Impact Assessment (EIA) process. No project splitting has occurred in the subject case. Under ABP-307891, the project was screened out for the need for EIA and in their Section 5 determination, the Council have confirmed their view again that "the proposal for underground cabling is not a prescribed class of development for the purposes of EIA" and that "the proposal does not require EIA".

In relation to Appropriate Assessment, and as outlined above, a version of the subject cabling (based on known outline information available at that time) was considered as part of the 'one-project' approach to reference ABP-307891. However, planning permission was not sought for those works, which did not form part of the defined planning unit for the SID application. It could not, because the final means of connection to Kellis 220kV Substation was not known by the applicant at that time, and secondly, the detailed design of that connection was not available for assessment. Under Appropriate Assessment provisions, the preparation of an NIS is a very defined process whereby mitigation measures are directed to address identified risks to Natura 2000 sites. Under ABP-307891, it was clearly articulated that the final means of connection would be the subject of a separate consenting process. With the detailed design for this now available, the subject works fall to be assessed on their individual merits. As highlighted above, the reasoning for taking other parts of the underground cabling to NIS is completely unrelated to the subject proposals / statutory process. Using the source-pathway-receptor model, it has been objectively determined that the subject c.43 metres of underground cabling will not result in potential significant effects on any European site. There is no ambiguity in respect of this. Importantly, and as noted above, the prepared AA Screening Report by Ecology Ireland has reached this conclusion having regard to potential cumulative or in combination affects to European sites in the wider receiving environment.

We respectfully submit that it cannot be reasonably implied that just because a previous component of a development required NIS, that it automatically follows that everything that subsequently interacts with that infrastructure requires NIS, or as suggested by the Council, relies on previously identified mitigation. A practical example in this regard would be subsequent upgrade works to a substation to provide for a new busbar / switchgear to enable distribution of energy made by a renewable energy project to the transmission network. Would such works,

which are routinely installed under exempted development, reasonably be de-exempted because a focused part of the renewable energy project was subject to mitigation in an NIS?

Importantly, the following sample precedent cases from An Bord Pleanála previously confirmed that an underground grid connection can constitute exempted development even when part of that project included an NIS.

#### ABP-308071-20

An Bord Pleanála determined a referral that “the laying underground cables in an SPA from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, Co. Limerick to the substation at Dromdeeveen for grid connection purposes” was development and exempted development.

The cable connection served a permitted wind farm that was the subject of Stage 2 Appropriate Assessment. This determination was made post the ‘O’Grianna judgement’. In confirming their view that the works constituted exempted development, the inspector confirmed the following:

*“...given the limited spatial extent of the proposed works, the temporary nature of the works, and as the area excavated was of no ecological value in terms of the site synopsis for the Special Protection Area, the subject works would have no significant effect, in terms of disturbance of habitats or species, on the ecology of the Special Protection Area, and that by applying a purposive interpretation of the provisions of Article 9(1)(a) (vii) of the Planning and Development Regulations, 2001, as amended, the laying of the underground electricity cable within the SPA is not affected by the restrictions on exempted development set out at the said Article 9(1)(a)(vii) of the Regulations and comes within the exempted development provisions of Class 26 of Part 1 of schedule 2 of the Regulations.”*

#### RL92.RL3436

An Bord Pleanála determined a referral that “the laying of underground 20kV electricity cable to link Turaheen and Glencarbry Wind Farms” was development and exempted development. This decision was signed on the 23<sup>rd</sup> June 2016. The wind projects in question were the subject of Stage 2 Appropriate Assessment. Referring to the Appropriate Assessment Screening on the file, the inspector screened out the need for an NIS as follows:

*“In relation to in-combination effects the Screening Report concludes that no such significant effects are likely to arise in the context either of other existing activities in the area, such as forestry or farming, or of wind farm development in the area, existing or planned. I concur with this conclusion having regard, in particular, to the small scale and nature of the proposed development, being an underground cable, laid in a trench approximately 1.2 metres deep by 0.6 metres in width, over a distance of approximately 3.5 kilometres and involving a short construction period of about 6 weeks.*

*I consider, therefore, that it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002137, or any*

*other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required".*

It follows that no restrictions apply which would de-exempt the applicability of Class 26 in this case.

## 05 Other Matters

The Board will note that at Request for Further Information (RFI) stage, Carlow County Council queried whether the Strategic Infrastructure Development pre-application consultation under Section 182E of the Planning and Development Act 2000 (as amended) precluded the use of a planning exemption in this case. This matter is addressed in the RFI response, whereby it has been confirmed that it does not. It is not inferred in any way under ABP-316205-23 that planning permission is required for the subject works and that they cannot be considered under exempted development provisions. Further, planning precedent confirms that An Bord Pleanála themselves have determined that equivalent development to that proposed can constitute exempted development. We note that this matter is not raised further in the final Section 5 determination of Carlow County Council and it is not a material consideration for the assessment of the subject referral.

## 06 Conclusion

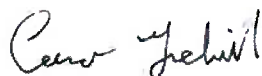
For the reasons outlined, we consider that the proposed underground cabling between the L30535 public road to a line bay in the Kellis 220kV substation constitutes development and is exempted development having regard to the provisions of:

- a. Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended);
- b. Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

We respectfully submit that use of Class 26 in this case is not restricted by Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended).

We would be grateful for an acknowledgement of this request. Please do not hesitate to contact us if you have any further queries.

Yours Sincerely



Conor Frehill  
HW Planning

Enclosures

1. Copy of Section 5 Declaration, as issued by Carlow County Council.



2. Digital Copy of Plans, Elevation and Section Drawings by TLI Group.
3. Digital Copy of Further Information Responses, including Appropriate Assessment Screening by Ecology Ireland, issued on behalf of the Referrer.
4. Digital Copy of Original Section 5 Request issued on behalf of Referrer.



6m of temporary Hedgerow removal to be reinstated post trenching works with native landscape planting.

Existing Public Road

Permitted UG Cable

Works Area (Subject to Section 5 Request)

Existing Kells 220KV Substation

See TL051020-DR-102

6.6m  
2.0m  
4.5m  
4m  
8.7m  
11m  
13.5m

H10 Bay  
H8 Bay  
Space

Control Buildings

Existing Access Track

Map Series:  
Prime Data Vector

ITM Centre Point Co-ordinates:  
X,Y = 679824.15, 671512.89

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PROJECT  
Garreenleen Solar Farm  
110KV Grid Connection

CLIENT



CONSULTANTS



NOTES:-

Proposed design is preliminary and should be used for planning purposes only. Detailed design to be completed and approved by EirGrid/ESB. Position/type of electrical equipment is indicative only and is subject to change following detailed design. Final specifications of Electrical equipment is to be as per EirGrid and ESB specifications. See Draw 051020-DR-102 for Electrical Equipment Section details.

LEGEND:-

- UGC Grid Connection Route
- Subject to County Council Ref: 201/143/AN BOND PLEANNALA Ref: 307891 & 313139
- All Existing Infrastructure shown this
- Proposed works shown this
- Temporary Hedgerow removal to be reinstated post trenching works shown this

ISSUE/REVISION

Nº	DATE	DESCRIPTION
N1	27.09.23	Issued for Information
N2	19.10.23	Issued for Information

PROJECT NUMBER

05-1020

SHEET TITLE

Site Layout Plan

SHEET NUMBER

051020-DR-101

PROGRESS PRINT  
NOT FOR CONSTRUCTION  
19.10.23



Site Layout Plan (Sheet 1 of 1)

Scale : 1:500