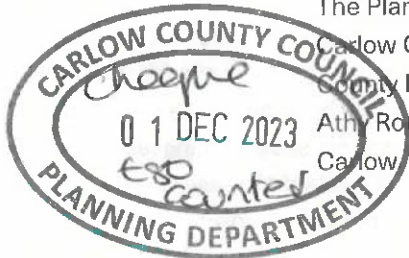


1st December 2023



The Planning Department,
Carlow County Council,
County Buildings,
Athy Road,
Carlow

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

www.hwplanning.ie
info@hwplanning.ie
+353 (0)21 487 3250

Directors:
Harold Walsh
Conor Frehill

Company Reg. No.
486211

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

Re: Request for Declaration under Section 5 of the Planning and Development 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 constitutes development and is or is not exempted development?"

Dear Sir/Madam,

We act on behalf of Garreenleen Solar Farm Limited who request a declaration from Carlow County Council on 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 Kellis 220kV substation constitutes development and is or is not exempted development. The following plans and particulars accompany this request:

- 2 no. copies of completed application form;
- 2 no. copies of site location mapping prepared by HW Planning;
- 2 no. copies of technical plans/specifications of proposed grid connection by TLI Group;
- 2 no. copies of Section 5 request statement by HW planning;
- 2 no. copies of statutory undertaker letter by Garreenleen Solar Farm Limited;
- Statutory fee of €80.

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 Pleanála¹ 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 exiting 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. It should be noted that while planning permission was not sought for the remainder of connection to the line bay in the substation, these works were described and assessed in environmental reporting in the SID application as part of a 'one-project' approach.

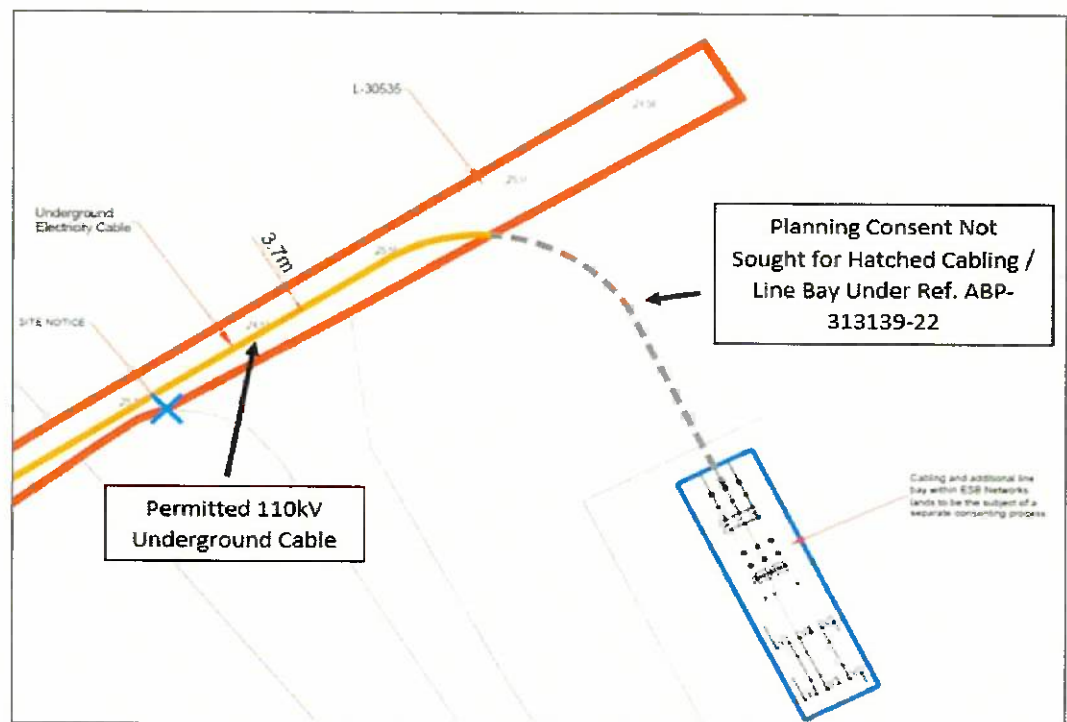


Figure 01: Permitted Context Under Reference ABP-313139-22

It is now 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. The purpose of request is to set out the nature and extent of the grid connection works and seek a formal declaration from Carlow County Council confirming they are exempt under Section 5 of the Planning and Development Act 2000 (as amended).

¹ Under An Bord Pleanála Reference ABP-313139-22.

STRATEGIC INFRASTRUCTURE DEVELOPMENT SCREENING

Prior to the making of this request for a Section 5 declaration, and for the avoidance of any doubt on the matter, Garreenleen Solar Farm Limited obtained a determination from An Bord Pleanála that the subject works do not constitute 'strategic infrastructure' as defined under Section 182A of the Planning and Development Act 2000 (as amended)². This was confirmed in a letter dated 28th July 2023.

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 –

- 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".*

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".

² An Bord Pleanála Reference ABP-316205-23. The determination also confirmed that the erection of a new line bay in the substation was not SID. These works do not form part of the subject request for a Section 5 declaration.

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".

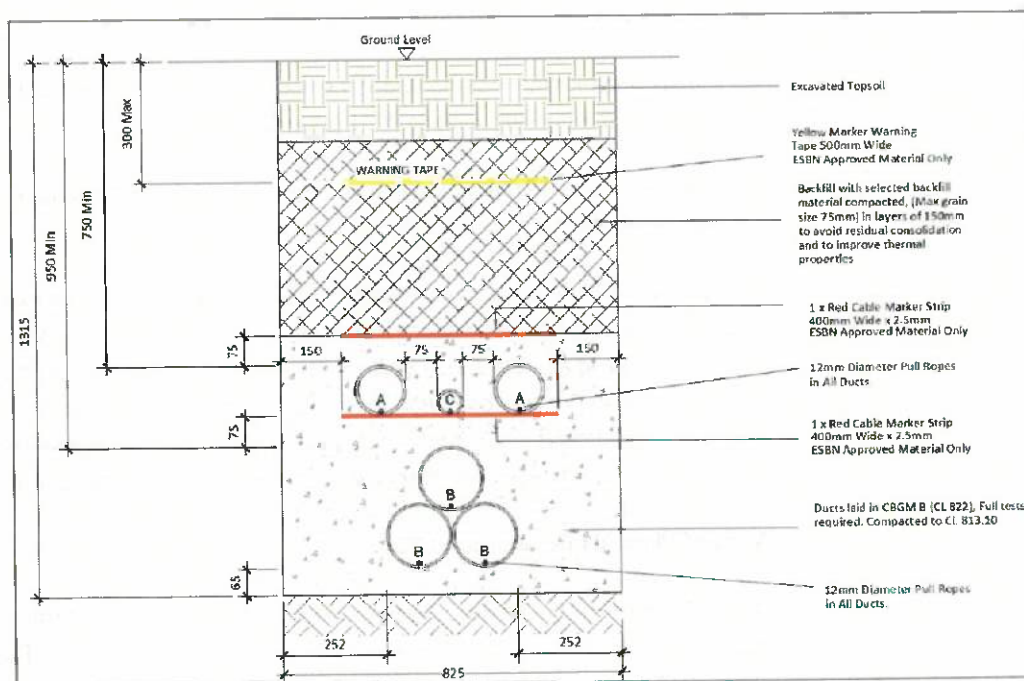
Article 9(1) establishes restrictions on exemptions stating that *"Development to which Article 6 relates shall not be exempted development for the purposes of the Act"* - (a) if the carrying out of such development would, inter alia:

- *"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."*

In order to connect the permitted underground cable to the now assigned bay (H10) in the existing Kellis 220kV substation, it is proposed to extend this cabling southwards from the public road into the substation lands by means of underground trench before connecting into the bay. The underground cabling will consist of 3 No. 160mm diameter HDPE power cable ducts, 2 No. 125mm diameter HDPE communications ducts and 1 no. 63mm diameter earth continuity duct to be installed in an excavated trench 825mm wide by 1315mm in depth. The total length of the subject underground cabling is approximately 43 metres.

As per the submitted plans, the laying of the cabling will require the temporary removal of 6 metres of hedgerow at the boundary of the public road and substation site. This will be reinstated post the completion of works with native landscape planting.

It is envisaged that the subject works will be completed alongside permitted reference ABP-313139-22, and as such, they will be subject to environmental management and monitoring measures which form part of the wider development. The contractor will prepare a targeted method statement outlining the construction methodology and control measures. The excavation, installation and reinstatement process will take 1 no. day to complete. Excavated material shall be employed to backfill the trench. A grade, smooth and trim trench floor will be established, before the ducts are laid and carefully covered by a Cement Bound Granular Mixture. The encased ducts will be backfilled before laying of topsoil and reseeded of grass.



Based on submitted plans, the majority of the works will be contained within the substation lands in the control of ESB Networks. Notwithstanding this, appropriate engagement will take place with Carlow County Council in advance with a road opening licence obtained as required. All works will be subject to necessary licenses, consents and/or directions and safe systems working arrangements, including temporary traffic management procedures.

04. Precedent

This section provides a summary of sample relevant precedent.

An Bord Pleanála Reference ABP-302895-18

On the 12th March 2019, An Bord Pleanála decided a referral on whether the provision of a medium voltage grid connection between a permitted solar farm and the Dunfirth ESB substation at Dysart, Johnstownbridge, County Kildare is or is not development or is or is not exempted development. This followed a determination by Kildare County Council that that the grid connection would be development, but would not be exempted development. The decision of the Council was based on its view that the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users and as such de-exempts the development based on Article 9(1)(a)(iii) of the Planning and Development Regulations.

The Board decided that the proposed development was development and exempted development on the basis that:

- The proposal did meet the board definition of works set out in Section 2(1) and 3(1) of the Act and therefore constitutes 'development';
- That the proposers, Power Capital Renewable Energy Ltd., fell within the category of 'statutory undertakers' *"on foot of its authorisation under the Planning Act to construct a solar farm that is a project for the provision of electricity"*;
- That the development came under the scope of Class 26, Part 1 Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- That there were no restrictions on exempted development having regard to environmental considerations or Article 9 of the regulations.

Addressing the Council's opinion that the development would be de-exempted by means of traffic hazard, it was noted by the inspector that *"the grid connection is located along an access road in the solar farm and along a 1.3km section of L1004. The referrer notes that the connection will be constructed in 100m sections and there will be traffic flow management. In this regard I note that having regard to the limited extent and duration of the works the development will not have an impact on traffic safety and will not give rise to obstruction of road users. 9(1)(a)(iii)"*.

An Bord Pleanála Reference RL3503

On the 18th April 2017, An Bord Pleanála determined a referral confirming that the provision of underground connection between the 110kV substation of the Yellow River Windfarm granted under PA0032 and the National Grid constituted development and exempted development. In taking this decision, the Board satisfied themselves that the proposers Green Wind Energy (Wexford) Ltd. met the definition of a statutory undertaker and that the proposed route options³ came within the scope of Class 26 of the regulations. The Board were also satisfied that the development did not fall within the scope of de-exemptions contained in Article 9 or come within

³ The proposal included a preferred route option of 146m and a second alternative option of 585m.

the scope of Section 4(4) of the Act related to Environmental Impact Assessment or Appropriate Assessment requirements.

05. Assessment

Based on a review of governing legislation and case precedent, we consider that the following are the principal issues when assessing whether the proposed development complies with Class 26 of Schedule 2, Part 1 of the Planning and Development Regulations 2001:

- Do the proposed works fall within the definition of development under the Planning and Development Act 2000 (as amended)?;
- Does the proposed development fall within the qualifying criteria of Class 26, including any associated conditions/limitations under the Planning and Development Regulations 2001 (as amended)?;
- Do any restrictions apply which would de-exempt Class 26 in this case?

DO THE PROPOSED WORKS FALL WITHIN THE DEFINITION OF DEVELOPMENT UNDER THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED)?

Based on the nature and description of works involved which include the excavation of a trench and laying of 110kV underground cabling for an approximate 43 metre length, it is clear that the proposed works constitutes 'development' for planning purposes as defined broadly under Section 2(1) and 3(1) of the Planning and Development Act 2000 (as amended). This is confirmed by established precedent.

DOES THE PROPOSED DEVELOPMENT FALL WITHIN THE QUALIFYING CRITERIA OF CLASS 26, INCLUDING ANY ASSOCIATED CONDITIONS/LIMITATIONS UNDER THE PLANNING AND DEVELOPMENT REGULATIONS 2001 (AS AMENDED)?

The prescribed wording of Class 26 of Schedule 2, Part 1 of the regulations provides for the following:

“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”.

As outlined in Section 02 of this request, the definition of statutory undertaker under the Planning and Development Act includes persons “authorised by an enactment or instrument under an enactment” to provide, inter alia, electricity services. Article 3(3) of the Planning and Development Regulations defines electricity undertaking’ as “an undertaker authorised to provide an electricity service”. Alongside, this the Electricity Regulation Act 1999 provides a broader definition of ‘electricity undertaking’ to mean “any person engaged in generation, transmission, distribution or supply of electricity, including any holder of a licence or authorisation under this Act, or any person who has been granted a permit under Section 37 of the Principal Act.”

In the case of the proposed development, the works will be undertaken by Garreenleen Solar Farm Limited who are a 'statutory undertaker' within the meaning of the primary legislation,

authorised to provide an electricity service. This submission to Carlow County Council includes a letter from Garreenleen Solar Farm Limited which confirms their status as a statutory undertaker.

DO ANY RESTRICTIONS APPLY WHICH WOULD DE-EXEMPT CLASS 26 IN THIS CASE?

Under Section 4(4) of the Planning and Development Act 2000 (as amended), projects that require Environmental Impact Assessment (EIA) or Appropriate Assessment are restricted in terms of development exemptions.

Part 1 and Part 2 Schedule 5 of the Planning and Development Regulations, 2001 defines the categories and thresholds of developments requiring EIA. The proposed grid connection is not a prescribed class of development for such purposes. The scale and limited nature of the works related to the proposed grid connection is not likely to have significant effects on the environment, having regard to Schedule 7 of the Regulations. Permitted reference ABP-313139-22 included an EIA Screening Statement, including assessment against the Schedule 7 criteria whereby it was objectively determined that an Environmental Impact Assessment Report (EIAR) was not required for the project, inclusive of the subject works.

An Appropriate Assessment (AA) screening / Natura Impact Statement (NIS) and separate Ecological Impact Assessment (EcIA) were prepared in support of permitted reference ABP-313139-22. The scope of these assessments included the extension of the 110kV underground grid connection cabling to a bay in the Kellis 220kV substation. The requirement to screen in for a Stage 2 NIS related to potential hydrological connectivity with the River Barrow and River Nore SAC via an earlier section of the grid connection between the Bendinstown Substation and the existing Kellis 220kV Substation. Specifically, this related to watercross crossing of the Burren River and Garreenleen Stream on this route. There are no interactions with watercourses arising from the subject works or hydrological connectivity to any designated Natura 2000 sites.

The proposed grid connection has also been reviewed in the context of relevant potential Article 9 de-exemptions as follows:

- The proposed grid connection will not contravene a condition attached to a permission under the Act or be inconsistent with the use specified in a permission [Article 9(1)(a)(i)];
- The grid connection route will enter the existing Kellis 220kV Substation site via underground trenching (temporary hedgerow removal to be reinstated). It will not result in the widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width [Article 9(1)(a)(ii)];
- The proposed works will not endanger public safety by reason of traffic hazard. The construction works will be subject to a road opening licence, as required, and be informed by appropriate safe systems traffic management/working arrangements for the short temporary duration of the construction phase. A review of precedent confirms that An Bord Pleanála has determined that underground grid connections of considerably longer length along public roads are exempted development [Article 9(1)(a)(iii)];
- The proposed grid connection does not consist of works to a site or object 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 for the area. Under permitted reference ABP-313139-22, the SID application included an Archaeological Assessment which considered the full extent of the underground cable connection to the

Kellis 220kV substation. There are no sites of archaeological importance in the immediate vicinity of the subject works which will transfer an underground cable from a previously developed road to a previously developed substation site. The proposed cable route has been subject to significant modern disturbance.

- As confirmed in the Archaeological Assessment under permitted reference ABP-313139-22, the works will not consist 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 [Article 9(1)(a)(viiA)].

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

06. Conclusions

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

Yours sincerely



Conor Frehill
HW Planning

COMHAIRLE CHONTAE CEATHARLOCHA
CARLOW COUNTY COUNCIL

C A R L O W
COUNTY COUNCIL
COMHAIRLE CHONTAE CEATHARLOCHA



COUNTY BUILDINGS, ATHY ROAD, CARLOW.

Tel: Phone:059-9170300/ Fax: 059-9170836

Website: www.carlow.ie

Application Form for Section 5 Declaration on Development & Exempted Development

1. Name of applicant: **Garreenleen Solar Farm Limited**
2. Address of applicant: **Floor 5, City Quarter, Lapp's Quay, Cork. T12 A2XD**
3. Name and address for correspondence: **Please contact the agent at HW Planning, 5 Joyce House, Barrack Square, Ballincollig, Cork.**

Tel. No: **(021) 487 3250**

Fax No: **N/A**

E-mail: **info@hwplanning.ie**

4. Location of Development: Townland: **Kellistown East, Co. Carlow**

Postal Address: (if different from Townland): **N/A**

5. Name and Address of Agent: **HW Planning, 5 Joyce House, Barrack Square, Ballincollig, Cork.**

-
6. Outline clearly the description of the development / proposal: **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 constitutes development and is or is not exempted development?**

7. Is this a Protected Structure or within the curtilage of a Protected Structure: **No.**
8. List any previous applications relating to the site: **Attendant grid connection application permitted under An Bord Pleanála Reference ABP-313139-22**
9. Are you aware of any enforcement proceedings relating to this site: **No.**
10. Please state applicant's interest in this site: **Substation lands are in the ownership of ESB Networks. Garreenleen Solar Farm Limited intend to undertake the subject works on their behalf as a 'statutory undertaker'. Please refer to enclosed letter confirming status of Garreenleen Solar Farm Limited in respect of this.**
11. List of plans, drawings etc. submitted with this application:
- **Completed application form**
 - **Site location mapping prepared by HW Planning**
 - **Technical plans/specifications of proposed grid connection by TLI Group**
 - **Section 5 request statement by HW planning**
 - **Statutory undertaker letter by Garreenleen Solar Farm Limited**
 - **Statutory fee of €80**

Signed: 
(Signature of Applicant)

Date: **1st December 2023**

Note: This application must be accompanied by:

Payment of Fee: This application must be accompanied by the statutory fee of €80

Lodgement: The application should be forwarded to:
Planning Department
Carlow County Council
Athy Road
Carlow

OFFICE USE ONLY

Date Received: _____

Date Decision Due: _____

Date of Decision: _____

Recommendation: _____

Advice Note:

This is a non-statutory advice note prepared by Carlow County Council for the purposes of advising applicants what information is required for a decision to be made under Section 5 by the Planning Authority.

Under Section 5 of the Planning and Development Act 2000 as amended any person may request in writing from the Planning Authority as declaration as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Planning and Development Act 2000 as amended.

The Planning Authority is required to make a decision within 4 weeks of receipt of a Declaration Request under Section 5, along with the prescribed fee, however the Planning Authority can also request Additional Information if it is considered that insufficient information has been submitted.

Therefore, it is advised that the following information should be submitted to enable the Planning Authority to make a qualified decision within the prescribed period:

- A site location map (Scale 1:2500 in rural area and 1:1000 in an urban area), with the site clearly outlined in red.
- Site Layout Map (Scale 1:500) in compliance with Article 23 of the Planning and Development Regs 2001 as amended.
- Drawings (Scale 1:50) Where development involves any construction of a new structure, increase in size of existing structure or alterations to an existing structure, scaled floor plans and elevations. Drawings should differentiate between the original building, all extension and proposed development.

The Secretary,
Planning Department,
Carlow County Council,
County Buildings,
Athy Road,
Carlow,
R93 E7R7

28 November 2023

Re: Request for Declaration under Section 5 of the Planning and Development Act 2000

Dear Sir/Madam,

I confirm that the proposed development concerned is to be undertaken by Garreenleen Solar Farm Limited, a statutory undertaker having a right or interest to provide services in connection with the proposed development.

Signed,

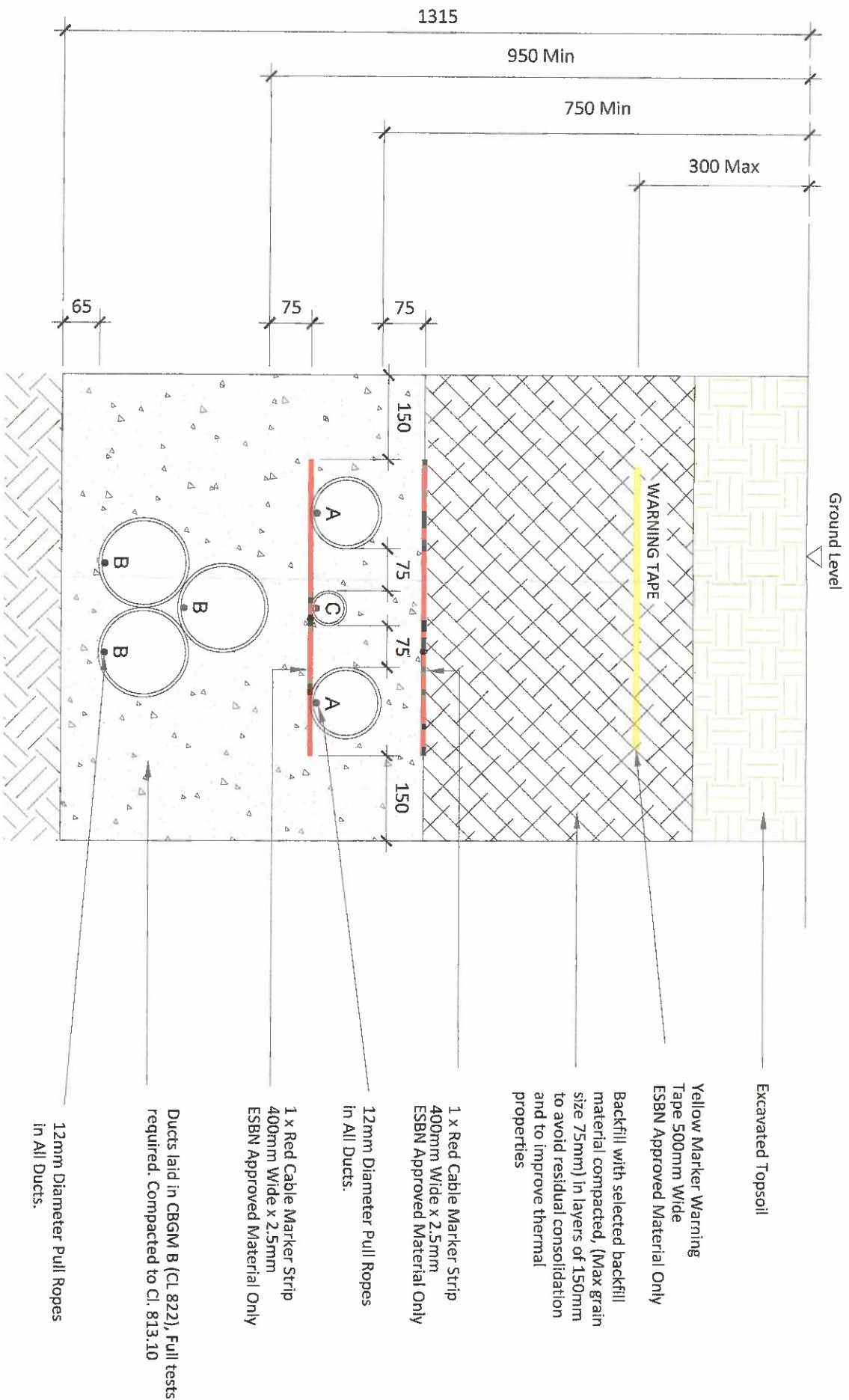


TJ Hunter
Director
Garreenleen Solar Farm Limited



Figure Title: Site Location Map
Project: Section 5 Request at Kellistown East, Co. Carlow
Map Projection & Series: ITM X, Y 279773, 171626 // OSI 1:2,500 Series - 4474-B
Scale: A3 - 1:2,500
Date/Version: 27/11/2023

--- Subject Underground Cable
--- Line Bay Location
--- Consented Grid Connection (Planning Ref: ABP-313139-22)



A = 125mm: Outer Diameter HDPE ESB Approved Duct, SDR=17.6
B = 160mm : Outer Diameter HDPE ESB Approved Duct, SDR= 21
C = 63mm: ECC Earth Continuity Conductor

Typical Section Through Off Road
SCALE 1:10

Note:

- Duct and cable sizing to be confirmed as part of detailed design.
- This drawing is to be read in conjunction with relevant drawings, specifications and reports
- Dimensions are in millimeters, unless noted otherwise
- Drawings are not to be scaled use figured dimensions only
- Cable spacing to be confirmed as part of Cable Rating Study

ALL REINSTATEMENT WORKS ARE TO BE IN ACCORDANCE WITH LANDOWNERS/CARLOW CO. CO. REQUIREMENTS

CLIENT

PROJECT

SHEET TITLE

ISSUE/REVISION



Head Office
Beenreigh,
Abbeydorney,
Tralee, Co. Kerry
Ireland
Tel: 00353 66 7135710



Garreenleen Solar Farm
110kV Grid Connection
PROJECT NUMBER
05-1020

Ducting through
Off Road Section
DRAWING STATUS
For Section 5

ISSUE/REVISION	DATE	DESCRIPTION
N1	27.09.23	Issued for Information
I/R		



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;

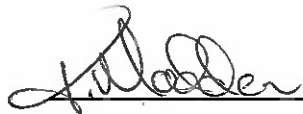
AND WHEREAS Carlow County Council has concluded that:

- (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

CARLOW COUNTY COUNCIL
PLANNING DEPARTMENT

SECTION 5 DECLARATION

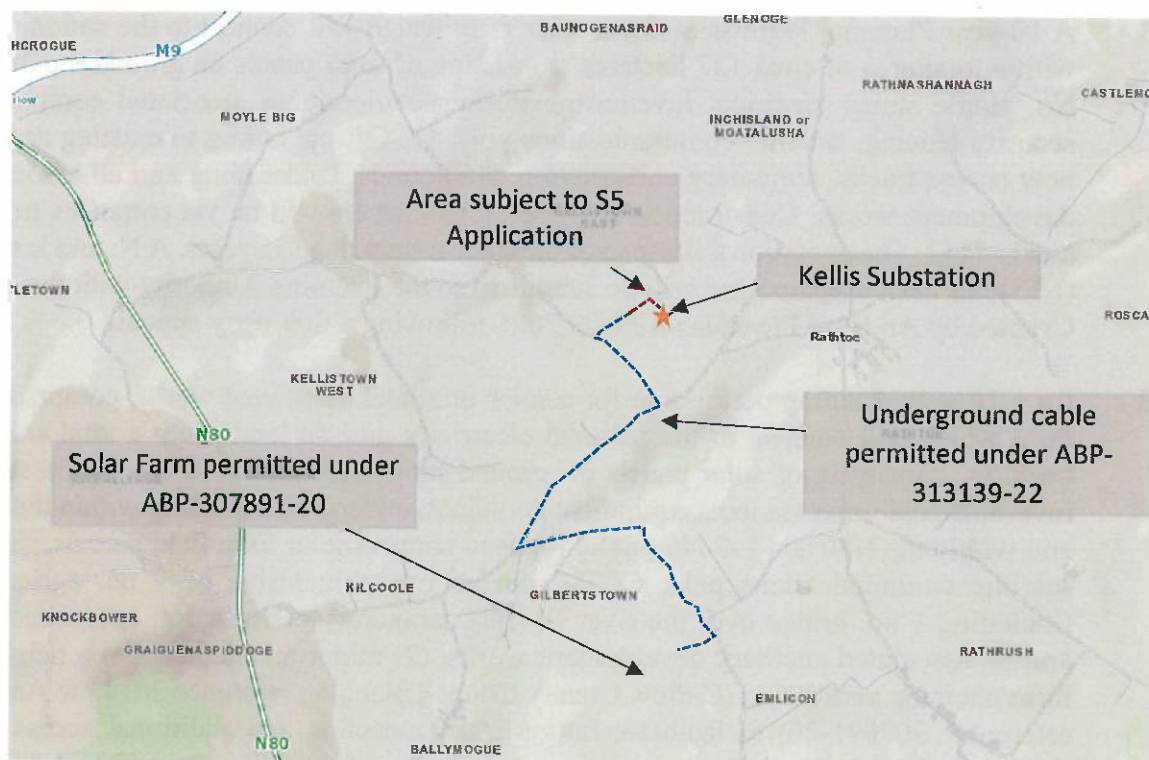


COMHAIRLE CONTAE
CHEATHARLACH
CARLOW COUNTY COUNCIL

Reg. Ref.	SEC5/23/41
Name of Applicant	Garreenleen Solar Farm Limited
Address of Development	Kellistown East, Co. Carlow
Development Description	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 constitutes development and is or is not exempted development.

1) Site Location/Context

The application site is located in the townland of Kellistown East, c. 1.2km west of Rathoe Village. The application site comprises an area running from the L-30535 public road to the Kellis 220kV substation. The proposed cabling is an extension of under cabling approved under ABP-313139-22 which starts at a solar farm permitted under ABP-307891-20 and terminates in front of the Kellis substation. This declaration relates solely to the 43m of additional underground cabling required to connect the approved cabling to the substation.



SITE LOCATION



AERIAL IMAGE

2) Relevant Planning History

Valid Applications relating to the Solar Farm:

- PL20/143 -** A 10 year Planning Permission for a solar farm which will connect to the national grid on lands with a total area of circa 127 hectares, consisting of solar panels on ground mounted frames, 28 No. single storey electrical inverter/transformer stations and associated equipment container, security fencing, satellite communications pole, CCTV, upgrading to existing access tracks and new access tracks, temporary construction compounds, landscaping and all associated ancillary development works. Construction and operational access will be via entrances from the L-7111 and L-7112. The operational lifespan of the solar farm will be 35 years. A Natura Impact Statement (NIS) has been prepared and will be submitted to the Planning Authority with the application. Granted by An Bord Pleanála on 28/09/2021 following a first party appeal.
- PL22/163 -** for a 10 year planning permission for a solar farm and associated works, comprising (1) A solar farm which will connect to the national electricity grid on lands with a total area of circa 128 hectares, consisting of solar panels on ground mounted frames, 18 no. single storey electrical inverter/transformer stations, equipment container, underground cabling within the solar farm site and within the N80 and L-3046 public roads to connect solar farm field parcels, security fencing, satellite communications pole, CCTV, access tracks inclusive of 9 no. agricultural bridges (including 1 no. bridge over the river Burrin), temporary construction compounds, landscaping and all associated ancillary development works. (2) minor amendments to a neighbouring solar farm planning permission (Carlow County Council planning reference 20143 & An Bord Pleanála reference: 307891-20) to facilitate future grid connection and additional access tracks for the proposed development. These amendments will comprise of the removal of 1,837 sqm of solar panels, provision of additional access tracks and focused removal of hedgerows to accommodate same, and the laying of 1,788 metres of 33kV underground cabling for the purposes of the future grid connection. (3) Construction and operational access for the solar farm will be via entrances from the L-7111, L-3046 and L-3049. The operational lifespan of the solar farm will be 35 years. A Natura Impact Statement (NIS) has been prepared and will be submitted to the planning authority with the application. Granted 22/03/2023

Valid Applications relating to the ESB Substation Site:

93/139 - Erection of 220KV outdoor type transmission station and control building.
Granted 04/01/1994.

ABP-316205- Pre-Application Consultation request to An Bord Pleanála for a proposed new line bay and associated underground cabling to be located within the existing Kellis 220kV substation.

Board Order dated 24/07/2023 stating that the proposal does not fall within the scope of Section 182A of the Planning and Development Act 2000 (as amended) and a planning application should be made in the first instance to Carlow County Council.

Valid Applications relating to Permitted Cable Route:

ABP-313139 - Section 182A Electricity Development Application comprising a proposed 110kV substation and underground grid connection.
Approved with conditions 03/11/2022.

ABP-318526 - Section 146B application to amend previously approved permission ABP-313139.
Application submitted 24/11/2023. No decision date.

3)Description of the Referral/Proposal

An exempted development declaration is being sought for the installation of underground cabling from permitted underground cabling to the Kellis substation. The route is c. 45m in length and is located on a minor road. The proposal is to connect an approved solar farm to the national electricity grid.

4)Relevant Legislative/Regulatory Provisions

Planning and Development Act 2000 (as amended)

- **Section 2**

“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(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.

“statutory undertaker” means a person, for the time being, authorised by or under any enactment of 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.

Also, Section 4(2) of the Act, which makes a provision for ministerial regulations to set out further exemptions. The Planning and Development Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the Act.

- Section 4(4)

Notwithstanding..... 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 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”.

Planning and Development Regulations 2001 (as amended)

- Article 3(3)

“electricity undertaking” means an undertaker authorised to provide an electricity service”.

- Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

- Article 9(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 meters in width,*
- (iii) endanger public safety by reason of a traffic hazard or obstruction of road users.*
- (iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,*
- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area 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,*
- (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,*

- (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,*
- (vii) *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, the 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,*
- (viiA) *consist 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,*
- (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.*
- (viii) *consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*
- (ix) *consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area 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,*
- (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,*
- (xi) *obstruct any public right of way,*
- (xii) *further to the provisions of section 82 of the Act, 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 in a development plan for the area 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 and the development would materially affect the character of the area,*

Schedule 2, Part 1 Development by Statutory Undertakers)

CLASS 26 - 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”

Case Law

O Grianna (and others) v An Bord Pleanála (and others) Record L 2014 No 2014 No 19 JR; 20114 No 10 COM. High Court judgement on judicial review of a permission granted on appeal by the Board for a development comprising 6 wind turbines and associated infrastructure in County Cork. The High Court judgement, quashing the Board’s decision, was based on the conclusion that the windfarm and grid connection constitute one single project and that both elements together would have to be subject to EIA in order to comply fully with the terms of the Directive.

Previous Referrals

PL302895: The Board determined that the provision of a medium voltage grid connection between a permitted solar farm and the Dunfirth ESB substation at Dysart, Johnstownbridge, County Kildare, is development and is exempted development.

RL3503: The Board determined that the provision of a connection between the 110kv substation of the Yellow River Windfarm granted under PA0032 & the National Grid is development and is exempted development at Rhode, Co. Offaly.

RL3375: The Board determined that 220m of 20kv underground cable forming part of grid connection at Raragh, Kingscourt, Co Cavan is development and is exempted development.

RL3408 RL3409 RL3410 RL3411: The Board determined that the development of grid connection from Crory / Lodgewood substation to Ballycadden windfarm is development and is not exempted development. I note that this determination found that the development came within the scope of Article 9(1) (a) of the Regulations as their construction contravened a condition of the planning permission for the relevant windfarms.

RL 2789: The Board determined that the laying of a 110kv underground electricity cable forming the grid connection to windfarm at Knockacummer Co Cork is development and is exempted development.

RL2778 The Board determined that the provision of 10.2km of underground cable forming the grid connection of windfarm at Loughaun North, Tulla, Co Clare to existing substation at Tooreen Ennis Co Clare is development and is exempted development.

RL3377 & RL3401: The Board determined that the provision of a 20kv electrical connection between Cnoc windfarm and Ballybeagh 38kv substation, Tullaroan, Co Kilkenny is development and is exempted development.

5)Further Information

The following **Further Information** was requested on the **15/12/2023**

- 1. The Planning Authority notes that the proposed development forms an extension to the underground cabling of an approved solar farm project. The wider project has been subject to a Natura Impact Statement which included mitigation measures to ensure the protection of qualifying interests associated with the SAC. Accordingly, it is considered that the proposed development, in combination with projects within the vicinity, may require appropriate assessment. In this regard, Section 4(4) of the Planning and Development Act 2000 (as amended) provides states that “Notwithstanding..... 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”*

Further, the proposed works have previously been subject to a pre-application consultation under Section 182E of the Planning and Development Act 2000 (as amended) in which it was concluded that a planning application should be made in the first instance to Carlow County Council.

Having regard to the foregoing, you are afforded an opportunity to respond to the issues highlighted above.

Response received 14/03/2024 as follows:

In response to the above, the applicant's agent, HW Planning Ltd., has submitted a Cover Letter which comments on the above matters. An Appropriate Assessment Screening Report has also been submitted, as prepared by Ecology Ireland. The submitted Appropriate Assessment Screening Report concludes that no significant effects arising from the proposed underground grid connection are likely to occur alone, or in combination with any other plan or project, in relation to any Natura 2000 site. The Appropriate Assessment Screening Report also states that the permitted solar farm and underground cable projects required NIS due to elements of the projects adjoining or intersection with watercourses which are hydrologically linked to designated European sites. The report states that as the proposed extended cable does not adjoin or intersect a watercourse, an NIS is not required.

6)Environmental Impact Assessment

Having regard to the nature, size and location of the development as detailed in the plans and particulars received, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded and a screening determination is not required.

7)Appropriate Assessment

At its closest point, the Slaney River SAC (Site Code 000781) is c.4.5m east of the application site. Further, the proposed route runs directly along a minor portion of a public road does not intersect any waterbodies. The overall solar farm has been previously assessed under ABP313139-22 which included a Natura Impact Assessment report prepared by the Applicants. This assessment included proposed underground cabling comprising a length of 4km.

The submitted NIS included mitigation measures to ensure that the interests of the SAC were protected as it was concluded that the construction phase elements of the project (in particular potential overland flow of construction stage silt/pollutants to the Burren River) have the potential to impact Natura 2000 site (i.e. River Barrow and River Nore SAC) within the project Zone of Influence.

The proposed development subject to the Section 5 is an extension of the approved development, including the mitigation measures, thus the proposal is dependent on approved mitigation measures to ensure the protection of the protected sites. Notwithstanding the applicant's response to the request for Further Information, it is considered that the proposed development is reliant on mitigation measures approved under ABP313139-22 and, therefore, the proposal subject to the Section 5 request may not be considered alone. It is considered that the proposal may not be screened out for appropriate assessment.

8)Flood Risk

On the basis of CFRAM flood maps for the area the proposed cabling route is not located in an area at risk of flooding.

9)Built Heritage

Archaeology

At its closest point, the proposed cabling is located over 250m southwest of the nearest recorded monument's zone of influence (CW01387 enclosure).

Architectural Heritage (RPS, NIAH & ACA)

No recorded features on or in the vicinity of the site.

10) Assessment

The submitted Section 5 Declaration application relates to the installation of c. 45m of underground cabling. In addition to the Section 5 application form, the applicant has submitted a Cover Letter; a declaration from Garreenleen Solar Farm Ltd stating their role as a statutory undertaker, a site layout plan, site location maps; and a duct section drawing. A request for Further Information was issued on 15/12/2023 and the applicant's response, received by the Planning Authority 14/03/2024 included a Cover Letter and an Appropriate Assessment Screening Report.

Does the proposal constitute development?

Section 3 of the Planning and Development Act 2000 (as amended) defines development as *"the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land"*. The proposal, which involves the provision of underground cables is deemed to constitute development within the meaning of this definition.

Does the proposal constitute exempted development?

Article 6(2) of the Regulations state that subject to Article 9, development of a class specified in Part 2 of Schedule 2 of the Regulations shall be exempted development provided that such development complies with the conditions and limitations specified. The applicants are requesting a declaration on the basis of Class 26 of the Planning and Development Regulations 2001 (as amended).

Previous relevant referrals before the Board highlight that being granted permission for an electricity generating development is sufficient to classify applicants as coming within the scope of Class 26 of the Regulations and therefore as falling within the category of a statutory undertaker. The applicants have submitted a declaration from Orsted stating Garreenleen Solar Farm limited as a statutory undertaker. Garreenleen Solar Farm Limited were granted permission for a solar farm and are therefore considered a statutory undertaker for the purposes of the current proposal and the associated planning application. That is, an applicant/developer is a statutory undertaker by reason of being authorised to construct a solar farm development under the Planning Act, and because the solar farm is a project for the provision of electricity.

Accordingly, I am satisfied on the basis of the planning history of the site that the applicant qualifies as a statutory undertaker, thus may avail of the Class 26 exemption, subject to compliance with the relevant conditions / limitations and restrictions on exemptions.

Restrictions on Exemption

Having regard to Article 9(1) of the Planning and Development Regulations 2001 (as amended), it is considered that there is no applicable subparagraph which would result in a de-exemption of Class 26. The most applicable would comprises the following:

- (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*

None of the conditions attached to the grant of planning under Pl Ref; PL20/143 (or its amendment PL22/163), nor the conditions attached to cabling approved under ABP-313139-22, place a restriction on the exemption being sought by the applicant and it is considered that the proposed would not contravene a condition of this grant of permission.

- (iii) *endanger public safety by reason of a traffic hazard or obstruction of road users.*

The works proposed are subject to a road opening license and a Traffic Management Plan. The submitted cover letter also states that the applicants shall engage with the Planning Authority in this respect. Accordingly, there is no foreseen endangerment of public safety.

(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,

Section 4(4) of the Planning and Development Act 2000 (as amended) provides an additional restriction on exempted development and states that “Notwithstanding... 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”

The proposal is for an extension to the underground cabling of an approved development. In combination, the overall proposal, comprising the approved route plus the extended route, is subject to a Natura Impact Statement, accordingly, it is my view that the proposal may not be deemed exempted development pursuant to the above.

The proposal for underground cabling is not a prescribed class of development for the purposes of EIA. Also, as detailed in section 4 of this planning report, it is considered by reason of the limited nature and scale of the works involved, that the proposal does not require EIA. The criteria in Schedule 7 of the Regulations have been taken into account in this regard. It is also relevant to note that the solar farm development permitted under reg. ref. PL20/143 was not subject to EIA, and solar farm developments are not a prescribed class of development for the purposes of EIA. The O’Grianna judgement is of relevance to this matter.

Accordingly, the proposed development is considered to be development which is not exempted development.

11) Recommendation

It is recommended that a declaration is issued informing the applicant that the proposal **is development and is not exempted development.**

Signed: Bryan Joyce
A/Executive Planner

Date: 02/04/2024

Signed: Careal Melia
Senior Executive Planner

Date: 21/4/2024

Declaration on Development & Exempted Development
Section 5 of the
Planning and Development Act 2000 (as amended)

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 reference ABP-307891-20 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, Bagenasltown, 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.

Appendix 1

APPROPRIATE ASSESSMENT SCREENING REPORT

Planning Application Reg. Ref: SEC5/23/41

A. DESCRIPTION OF PROJECT AND LOCAL SITE

Site Location:	Kellistown East. Co. Carlow
Total Site Area:	Not stated.
Floor Area of Proposed Development:	Not applicable.
Identification of Natura 2000 site(s):	Slaney River SAC (Site Code 000781)
Is the application accompanied by an EIAR?	No.

B. IDENTIFICATION OF RELVANT NATURA 2000 SITE(S):

The reasons for the designation of the Natura 2000 site:(A site synopsis can be obtained from www.npws.ie)The conservation objectives/qualifying interests of the site and the factors that contributes to the conservation value of the site:	
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C. NPWS ADVICE:

Summary of advice received in written form:	None Received.
Advice received over the over phone:	None Received.

D. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

(Purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).If answer yes to any of the questions, below then the effect is significant.

1.1	Would there be any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance)	No.
1.2	Would there be a reduction in habitat area on a Natura 2000 site?	No.
1.3	Would there be direct/indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site?	No.
1.4	Would there be serious/ongoing disturbance to species/habitats for which the Natura 2000 site is selected (e.g. because of increased noise, illumination and human activity)?	No.
1.5	Would there be direct/indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site?	No.
1.6	Would the project interfere with mitigation measures put in place for other plans/projects? (Look at in-combination effects with completed, approved but not completed, and proposed plans/projects. Look at projects/plans within and adjacent to Natura 2000 sites and identify/)	No.

E. SCREENING CONCLUSION

At its closest point, the Slaney River cSAC (Site Code 000781) is c.4.5m west of the application site. Further, the proposed route runs directly along the a public road. The cabling is a minor extension (45m) of additional cabling to previously approved cabling. The submitted NIS included mitigation measures to ensure that the interests of the SAC were protected as it was concluded that the construction phase elements of the project (in particular potential overland flow of construction stage silt/pollutants to the Burren River) have the potential to impact Natura 2000 site (i.e. River Barrow and River Nore SAC) within the project Zone of Influence. The proposed development subject to the Section 5 is an extension of the approved development, including the mitigation measures, thus the proposal is dependent on approved mitigation measures to ensure the protection of the protected sites.

Signed:	<i>Brian Joyce</i>
Position:	A/Executive Planner
Date:	2 nd April 2024

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**CARLOW COUNTY COUNCIL
PLANNING DEPARTMENT**



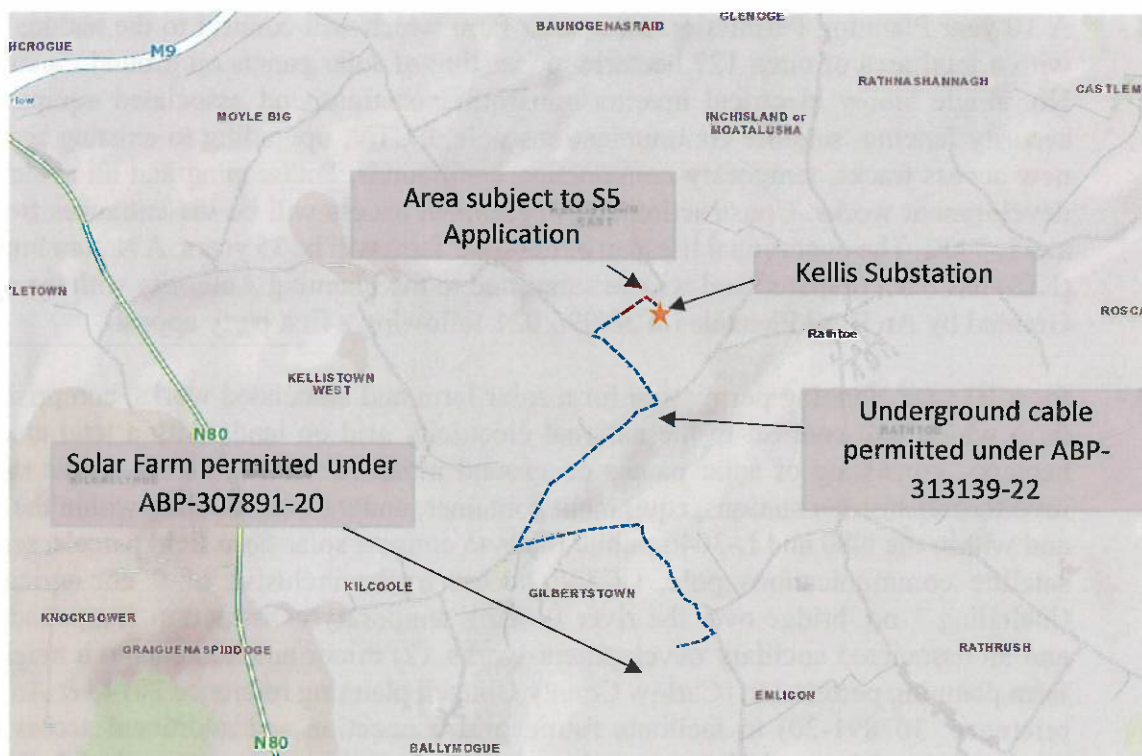
**COMHAIRLE CONTAE
CHEATHARLACH**
CARLOW COUNTY COUNCIL

SECTION 5 DECLARATION

Reg. Ref.	SEC5/23/41
Name of Applicant	Garreenleen Solar Farm Limited
Address of Development	Kellistown East, Co. Carlow
Development Description	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 constitutes development and is or is not exempted development.

1) Site Location/Context

The application site is located in the townland of Kellistown East, c. 1.2km west of Rathoe Village. The application site comprises an area running from the L-30535 public road to the Kellis 220kV substation. The proposed cabling is an extension of under cabling approved under ABP-313139-22 which starts at a solar farm permitted under ABP-307891-20 and terminates in front of the Kellis substation. This declaration relates solely to the 43m of additional underground cabling required to connect the approved cabling to the substation.



SITE LOCATION



AERIAL IMAGE

2) Relevant Planning History

Valid Applications relating to the Solar Farm:

- PL20/143 -** A 10 year Planning Permission for a solar farm which will connect to the national grid on lands with a total area of circa 127 hectares, consisting of solar panels on ground mounted frames, 28 No. single storey electrical inverter/transformer stations and associated equipment container, security fencing, satellite communications pole, CCTV, upgrading to existing access tracks and new access tracks, temporary construction compounds, landscaping and all associated ancillary development works. Construction and operational access will be via entrances from the L-7111 and L-7112. The operational lifespan of the solar farm will be 35 years. A Natura Impact Statement (NIS) has been prepared and will be submitted to the Planning Authority with the application. Granted by An Bord Pleanála on 28/09/2021 following a first party appeal.
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- 93/139 - Erection of 220KV outdoor type transmission station and control building.
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Board Order dated 24/07/2023 stating that the proposal does not fall within the scope of Section 182A of the Planning and Development Act 2000 (as amended) and a planning application should be made in the first instance to Carlow County Council.

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An exempted development declaration is being sought for the installation of underground cabling from permitted underground cabling to the Kellis substation. The route is c. 45m in length and is located on a minor road. The proposal is to connect an approved solar farm to the national electricity grid.

4)Relevant Legislative/Regulatory Provisions

Planning and Development Act 2000 (as amended)

- Section 2

“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(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.

“statutory undertaker” means a person, for the time being, authorised by or under any enactment of 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.

Also, Section 4(2) of the Act, which makes a provision for ministerial regulations to set out further exemptions. The Planning and Development Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the Act.

- Section 4(4)

Notwithstanding... 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 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".

Planning and Development Regulations 2001 (as amended)

- Article 3(3)

"electricity undertaking" means an undertaker authorised to provide an electricity service".

- Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

- Article 9(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 meters in width,*
- (iii) endanger public safety by reason of a traffic hazard or obstruction of road users.*
- (iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,*
- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area 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,*
- (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,*
- (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,*

- (vii) *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, the 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,*
- (viiA) *consist 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,*
- (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.*
- (viii) *consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*
- (ix) *consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area 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,*
- (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,*
- (xi) *obstruct any public right of way,*
- (xii) *further to the provisions of section 82 of the Act, 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 in a development plan for the area 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 and the development would materially affect the character of the area,*

Schedule 2, Part 1 Development by Statutory Undertakers)

CLASS 26 - 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"

Case Law

O Grianna (and others) v An Bord Pleanála (and others) Record L 2014 No 2014 No 19 JR; 2014 No 10 COM. High Court judgement on judicial review of a permission granted on appeal by the Board for a development

comprising 6 wind turbines and associated infrastructure in County Cork. The High Court judgement, quashing the Board's decision, was based on the conclusion that the windfarm and grid connection constitute one single project and that both elements together would have to be subject to EIA in order to comply fully with the terms of the Directive.

Previous Referrals

PL302895: The Board determined that the provision of a medium voltage grid connection between a permitted solar farm and the Dunfirth ESB substation at Dysart, Johnstownbridge, County Kildare, is development and is exempted development.

RL3503: The Board determined that the provision of a connection between the 110kv substation of the Yellow River Windfarm granted under PA0032 & the National Grid is development and is exempted development at Rhode, Co. Offaly.

RL3375: The Board determined that 220m of 20kv underground cable forming part of grid connection at Raragh, Kingscourt, Co Cavan is development and is exempted development.

RL3408 RL3409 RL3410 RL3411: The Board determined that the development of grid connection from Crory / Lodgewood substation to Ballycadden windfarm is development and is not exempted development. I note that this determination found that the development came within the scope of Article 9(1) (a) of the Regulations as their construction contravened a condition of the planning permission for the relevant windfarms.

RL 2789: The Board determined that the laying of a 110kv underground electricity cable forming the grid connection to windfarm at Knockacummer Co Cork is development and is exempted development.

RL2778 The Board determined that the provision of 10.2km of underground cable forming the grid connection of windfarm at Loughaun North, Tulla, Co Clare to existing substation at Tooreen Ennis Co Clare is development and is exempted development.

RL3377 & RL3401: The Board determined that the provision of a 20kv electrical connection between Cnoc windfarm and Ballybeagh 38kv substation, Tullaroan, Co Kilkenny is development and is exempted development.

5)Environmental Impact Assessment

Having regard to the nature, size and location of the development as detailed in the plans and particulars received, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded and a screening determination is not required.

6)Appropriate Assessment

At its closest point, the Slaney River cSAC (Site Code 000781) is c.4.5m east of the application site. Further, the proposed route runs directly along a minor portion of a public road does not intersect any waterbodies. The overall solar farm has been previously assessed under ABP313139-22 which included a Natura Impact Assessment report prepared by the Applicants. This assessment included proposed underground cabling comprising a length of 4km.

The submitted NIS included mitigation measures to ensure that the interests of the SAC were protected as it was concluded that the construction phase elements of the project (in particular potential overland flow of construction stage silt/pollutants to the Burren River) have the potential to impact Natura 2000 site (i.e. River Barrow and River Nore SAC) within the project Zone of Influence.

The proposed development subject to the Section 5 is an extension of the approved development, including the mitigation measures, thus the proposal is dependent on approved mitigation measures to ensure the protection of the protected sites.

7)Flood Risk

On the basis of CFRAM flood maps for the area the proposed cabling route is not located in an area at risk of flooding.

8)Built Heritage

Archaeology

At its closest point, the proposed cabling is located over 250m southwest of the nearest recorded monument's zone of influence (CW01387 enclosure).

Architectural Heritage (RPS, NIAH & ACA)

No recorded features on or in the vicinity of the site.

9) Assessment

The submitted Section 5 Declaration application relates to the installation of c. 45m of underground cabling. In addition to the Section 5 application form, the applicant has submitted a Cover Letter; a declaration from Garreenleen Solar Farm Ltd stating their role as a statutory undertaker, a site layout plan, site location maps; and a duct section drawing. The cabling is to consist of 45m.

Does the proposal constitute development?

Section 3 of the Planning and Development Act 2000 (as amended) defines development as "*the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land*". The proposal, which involves the provision of underground cables is deemed to constitute development within the meaning of this definition.

Does the proposal constitute exempted development?

Article 6(2) of the Regulations state that subject to Article 9, development of a class specified in Part 2 of Schedule 2 of the Regulations shall be exempted development provided that such development complies with the conditions and limitations specified. The applicants are requesting a declaration on the basis of Class 26 of the Planning and Development Regulations 2001 (as amended).

Previous relevant referrals before the Board highlight that being granted permission for an electricity generating development is sufficient to classify applicants as coming within the scope of Class 26 of the Regulations and therefore as falling within the category of a statutory undertaker. The applicants have submitted a declaration from Orsted stating Garreenleen Solar Farm limited as a statutory undertaker. Garreenleen Solar Farm Limited were granted permission for a solar farm and are therefore considered a statutory undertaker for the purposes of the current proposal and the associated planning application. That is, an applicant/developer is a statutory undertaker by reason of being authorised to construct a solar farm development under the Planning Act, and because the solar farm is a project for the provision of electricity.

Accordingly, I am satisfied on the basis of the planning history of the site that the applicant qualifies as a statutory undertaker, thus may avail of the Class 26 exemption.

Restrictions on Exemption

Having regard to Article 9(1) of the Planning and Development Regulations 2001 (as amended), it is considered that there is no applicable subparagraph which would result in a de-exemption of Class 26. The most applicable would comprises the following:

- (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*

None of the conditions attached to the grant of planning under Pl Ref; PL20/143 (or its amendment PL22/163), nor the conditions attached to cabling approved under ABP-313139-22, place a restriction on the exemption being

sought by the applicant and it is considered that the proposed would not contravene a condition of this grant of permission.

(iii) endanger public safety by reason of a traffic hazard or obstruction of road users.

The works proposed are subject to a road opening license and a Traffic Management Plan. The submitted cover letter also states that the applicants shall engage with the Planning Authority in this respect. Accordingly, there is no foreseen endangerment of public safety.

(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,

A Natura Impact Statement was submitted to An Bord Pleanála in support of a section 182A application for an ESB substation and underground cabling under ABP-313139-22. The proposal relates to 45m of additional cabling to connected the approved cable to an existing substation.

Section 4(4) of the Planning and Development Act 2000 (as amended) provides an additional restriction on exempted development and states that *"Notwithstanding... 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"*

The proposal is for an extension to the underground cabling of an approved development. In combination, the proposal is subject to a Natura Impact Statement, accordingly, it is my view that the proposal may not be deemed exempted development.

The proposal for underground cabling is not a prescribed class of development for the purposes of EIA. Also, as detailed in section 4 of this planning report, it is considered by reason of the limited nature and scale of the works involved, that the proposal does not require EIA. The criteria in Schedule 7 of the Regulations have been taken into account in this regard. It is also relevant to note that the solar farm development permitted under reg. ref. PL20/143 was not subject to EIA, and solar farm developments are not a prescribed class of development for the purposes of EIA. The O'Grianna judgement is of relevance to this matter.

Accordingly, the proposed development is considered to be exempted development.

10) Recommendation

It is recommended that the following **further information** be requested in relation to this declaration request;

- I. The Planning Authority notes that the proposed development forms an extension to the underground cabling of an approved solar farm project. The wider project has been subject to a Natura Impact Statement which included mitigation measures to ensure the protection of qualifying interests associated with the SAC. Accordingly, it is considered that the proposed development, in combination with projects within the vicinity, may require appropriate assessment. In this regard, Section 4(4) of the Planning and Development Act 2000 (as amended) provides states that *"Notwithstanding... 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"*

Further, the proposed works have previously been subject to a pre-application consultation under Section 182E of the Planning and Development Act 2000 (as amended) in which it was concluded that a planning application should be made in the first instance to Carlow County Council.

Having regard to the foregoing, you are afforded an opportunity to respond to the issues highlighted above.

Signed: Bryan Joyce
A/Executive Planner

Date: 14/12/23

Signed: A. P.
Senior Planner

Date: 14/12/23

Appendix 1

APPROPRIATE ASSESSMENT SCREENING REPORT

Planning Application Reg. Ref: SEC5/23/41

A. DESCRIPTION OF PROJECT AND LOCAL SITE

Site Location:	Kellistown East. Co. Carlow
Total Site Area:	Not stated.
Floor Area of Proposed Development:	Not applicable.
Identification of Natura 2000 site(s):	Slaney River cSAC (Site Code 000781)
Is the application accompanied by an EIAR?	No.

B. IDENTIFICATION OF RELVANT NATURA 2000 SITE(S):

The reasons for the designation of the Natura 2000 site:(A site synopsis can be obtained from www.npws.ie)The conservation objectives/qualifying interests of the site and the factors that contributes to the conservation value of the site:	
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C. NPWS ADVICE:

Summary of advice received in written form:	None Received.
Advice received over the over phone:	None Received.

D. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

(Purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).If answer yes to any of the questions, below then the effect is significant.

1.1	Would there be any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance)	No.
1.2	Would there be a reduction in habitat area on a Natura 2000 site?	No.
1.3	Would there be direct/indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site?	No.
1.4	Would there be serious/ongoing disturbance to species/habitats for which the Natura 2000 site is selected (e.g. because of increased noise, illumination and human activity)?	No.
1.5	Would there be direct/indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site?	No.
1.6	Would the project interfere with mitigation measures put in place for other plans/projects? (Look at in-combination effects with completed, approved but not completed, and proposed plans/projects. Look at projects/plans within and adjacent to Natura 2000 sites and identify/)	No.

E. SCREENING CONCLUSION

At its closest point, the Slaney River cSAC (Site Code 000781) is c.4.5m west of the application site. Further, the proposed route runs directly along the a public road. The cabling is a minor extension (45m) of additional cabling to previously approved cabling. The submitted NIS included mitigation measures to ensure that the interests of the SAC were protected as it was concluded that the construction phase elements of the project (in particular potential overland flow of construction stage silt/pollutants to the Burren River) have the potential to impact Natura 2000 site (i.e. River Barrow and River Nore SAC) within the project Zone of Influence. The proposed development subject to the Section 5 is an extension of the approved development, including the mitigation measures, thus the proposal is dependent on approved mitigation measures to ensure the protection of the protected sites.

Signed:	Bryan Joyce		
Position:	A/Executive Planner	Date:	13 th December 2023

