

An
Bord
Pleanála

Inspector's Report ABP-322060-25

Question	Whether the underground MV ducting and cabling linking existing and proposed substations is or is not development or is or is not exempted development.
Location	Downestown & Gillinstown, Duleek, Co. Meath
Declaration	
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	LS525011
Applicant for Declaration	Highfield Solar Limited
Planning Authority Decision	Is not exempted development
Referral	
Referred by	Highfield Solar Limited
Owner/ Occupier	Highfield Solar Limited
Observer(s)	None
Date of Site Inspection	None
Inspector	Gillian Kane

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1.0 Site Location and Description

- 1.1. The subject site is a 1km long stretch along a public road between two solar farms, one in Gillinstown and one on Downestown, Co. Meath.

2.0 The Question

- 2.1. Whether the underground MV ducting and cabling linking existing and proposed substations is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 25th of February 2025, the Planning Authority issued a declaration that the proposed development is development and is not exempted development, therefore is development requiring planning permission.

3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** States that the applicant is a statutory undertaker under the definition provided in the Act, and that the development falls within the scope of Class 26 of the Regulations. Planner notes the report of the transportation department and concurs that the development would endanger public safety by reason of traffic hazard. Therefore works fall within the scope of article 9(1)(viiB). Recommends that declaration issue stating that development is not exempted development.

4.0 Planning History

- 4.1.1. **ABP-317209-23** (Planning Authority reg, ref. 22972) : Planning permission granted to Highfield Solar Limited for a 10-year permission for the construction of a solar PV energy development within a total site area of approximately 18.92ha, to include solar PV panels ground mounted on steel support structures, IPP electrical control building and associated compound, electrical transformer / inverter station modules, battery storage modules, storage containers, CCTV cameras, access tracks, fencing and associated electrical cabling, ducting and ancillary infrastructure at Downestown, Duleek, Co. Meath.

- 4.1.2. **PL17.248146:** (Planning Authority reg. ref. LB/160898): Planning permission granted to Highfield Solar Limited for the construction of a solar farm to include two electrical substations, transformer, inverter station and storage modules, solar panels, access roads and associated site works at Gillinstown, Duleek, Co. Meath.
- 4.1.3. **ABP-303568-19:** permission granted to Highfield Solar Limited for an electrical substation and associated 110kV and MV infrastructure required to connect ground mounted solar PV generation to the electrical transmission system, underground cabling and all associated ancillary site development work at Gillinstown, Duleek, Co. Meath

5.0 Policy Context

5.1. Meath County Development Plan 2021-2017

- 5.1.1. The subject site is on unzoned lands outside the settlement boundary of Duleek.

5.2. Natural Heritage Designations

- 5.2.1. Duleek Commons pNHA is located 0.6km to the east of the subject site.
Thomastown Bog pNHA is 0.5km to the west of the subject site.

6.0 The Referral

6.1. Referrer's Case

- The works proposed are underground and do not result in any associated traffic hazard while in operation.
- The proposed works include approx. 1km of works immediately adjacent to the public road carriageway and will take approx. 4 weeks to complete.
- Any disruption would be extremely limited. Standard traffic management measures are readily available to remove any perceived traffic hazard during construction.
- The traffic management measures required for the works proposed are analogous to the measures required under the Department of Transport's Traffic Signs Manual for other listed exempted development.
- A Traffic Impact Assessment submitted with the referral confirms the minimal levels of the proposed works.

- The Department of Transport's Traffic Signs Manual include multiple options for appropriately managing traffic during the short construction period.
- The declaration of Meath County Council could have implications for the examples listed in the Traffic Signs Manual which are routinely carried out as exempted development.
- The Referrer notes the following declarations of exempted development:
 - PL93.RL3606 Waterford City and County Council,
 - PL19.RL3503 Offaly County Council,
 - PL92.RL3436 Tipperary County Council,
 - PL17.RL3375 Meath County Council,
 - PL10.RL3377 Kilkenny County Council,
- The Board is requested to reach a similar declaration.
- The referral is accompanied by a copy of the Meath County Council Declaration and Planning Report and a Traffic Impact Assessment.
- The Traffic Impact Assessment states that it provides more detailed traffic movement arrangements as part of a road opening licence application, prior to construction. The TIA provides details on traffic movements at construction stage, a programme of traffic movements during construction, traffic management measures, transport movements at operations stage and a conclusion. The conclusion states that the construction works shall have a negligible impact on traffic and will not result in a traffic hazard.

6.2. Planning Authority Response

6.2.1. None on file.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. “**statutory undertaker**” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to:

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

7.1.3. **Section 2(1):** In this Act, except where the context otherwise requires

"**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

"**structure**" means any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined and

(a) Where this context so admits, includes the land on, in or under which the structure is situated".

7.1.4. **Section 3(1):** in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

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

Section 4(1)(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures

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

7.1.7. **Section 5(3)(a)** Where a declaration is issued under this section, any person issued with a declaration under subsection (2) (a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of

the date of the issuing of the declaration. (b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).

- 7.1.8. **Section 5(4):** Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

7.2. **Planning and Development Regulations, 2001**

- 7.2.1. Part 2 of the Planning and Development Regulations, 2001 refers to Exempted Development. 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.

Restrictions on Exemptions:

- 7.2.2. “Subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act”.

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

8.0 **EIA Screening**

- 8.1.1. The proposed development does not come within the definition of a ‘project’ for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings. Refer to Form 1 in Appendix 1 of report.

9.0 **AA Screening**

- 9.1.1. Having regard to the nature and scale of the subject referral, the location of the site within an adequately serviced urban area, the physical separation distances to designated European Sites, and the absence of an ecological and/ or a hydrological

connection, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

10.0 Assessment

- 10.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the above proposal in terms of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

10.2. Is or is not development

- 10.2.1. The proposal comprises the placing of underground MV ducting and cabling to link existing and proposed substations for two permitted solar farms. The proposal involves 1km of land immediately adjacent to the public road carriageway.
- 10.2.2. All parties are in agreement that the proposal comprises development, as per section 3(1) of the Act, which defines "development" as the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. I am satisfied that the placing of underground MV ducting and cabling is works, and that such works would be carried out on land and therefore constitute "development" as per section 3(1) of the Planning and Development Act 2000, as amended.

10.3. Is or is not exempted development

- 10.3.1. The Planning Authority and the Referrer accept that the development falls under the Class 26. Class 26 of Part 1 of Schedule 2 of the Planning and Development Regs 2001, as amended states that 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.
- 10.3.2. Class 26 applies to "*any undertaker authorised*", to '*an electricity service*' and to '*the undertaking*'. I draw attention to the definition of 'electricity undertaking' provided at Article 3(3) of the Regulations, which is defined as "...an undertaker authorised to provide an electricity service." The definition of "Statutory Undertaker" provided at Section 2 of the Act, is "... a person, for the time being, authorised by or under any

enactment or instrument under an enactment to... (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services....”

10.3.3. The referrer Highfield Solar has permission for both solar farms between which the underground cabling will run and for an electrical substation and associated 110kV and MV infrastructure required to connect ground mounted solar PV generation to the electrical transmission system, underground cabling and all associated ancillary site development work at Gillenstown Solar Farm. Based on those definitions, I am satisfied that the referrer Highfield Solar is a statutory undertaker, who is authorised to provide an electricity service and that the development comprises the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking. There are no conditions or limitations attached to Class 26.

10.3.4. I am satisfied that the development referred to the Board constitutes development that is exempted development under Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

10.3.5. I note the following declarations issued by the Board:

- ABP-307454-20: The construction of an underground 20 kV medium voltage cable within the public road between a permitted solar farm and the 38 kV substation, is development and is exempted development.
- ABP-302895-18: The provision of a medium voltage (20kV) underground grid connection between a permitted solar farm at Dysart, Johnstownbridge, County Kildare and the Dun firth ESB substation at Dunfirth, Johnstownbridge, County Kildare is development and is exempted development.
- RL19.RL3503: The Board determined that the provision of a connection between the 110kV substation of the Yellow River wind farm 110kV substation at Rhode, County Offaly is development and is exempted development.
- RL3377: The provision of a 20kV electrical connection between Cnoc Wind Farm at Grangehill, Bawnlea and Newpark, Grange, Barna, Thurles, County Tipperary and Ballybeagh 38Kv substation at Ballbeagh, Tullaroan, County Kilkenny is development and is exempted development.

- RL 3375 The laying of 220 m of 20kV underground cable forming part of the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Kilnalun, County Meath is development and is exempted development
- RL3436 The laying of underground 20kV electricity cables and ancillary works to link Turraheen Windfarm (Planning Ref. 13/24) to Glencarbry Windfarm (Planning Ref. 07/255) is development and is exempted development.
- RL3436: The laying of underground 20 kV cables and ancillary works to link Turraheen Windfarm (planning register reference number 13/24, An Bord Pleanála appeal reference number PL23.242710) to Glencarbry Windfarm (planning register reference number 07/255, An Bord Pleanála appeal reference number PL23.225618) at Glenough Lower, Rossmore, Clonmel, County Tipperary is development and is exempted development
- RL3503: The provision of a connection between the 110kV substation of the Yellow River wind farm granted under An Bord Pleanála reference number 19.PA0032 and the National Grid at the adjoining Derryiron 110kV substation at Rhode, County Offaly is development and is exempted development.
- RL3606: The laying of underground MV cables to link a substation in the permitted Drumroe solar farm development (Waterford City and County Council permission reference 16/126 – An Bord Pleanála appeal reference PL93.246902) to the existing ESB Kilcloher sub station, at Kilcloher and Drumroe, Cappoquin, County Waterford is development and is exempted development

10.4. **Restrictions on exempted development**

- 10.4.1. The Planning Authority considered the subject gate to endanger public safety by reason of traffic hazard or the obstruction of other road users and as such is de-exempted under article 9(1)(a)(iii) of the Regulations. The planning report on the declaration states that insufficient information was received regarding the joint bays or the duct trench and that it was not clear that the development would not cause a traffic hazard.

10.4.2. The Referrer submitted a Traffic Impact Assessment with the referral appeal. The TIA is a reference document to finalise more detailed traffic movement arrangements as part of a road opening licence application. Details are provided of traffic movements at construction stage, a typical programme of transport movements during construction, traffic management measures and transport movements at operation stage. The conclusion of the TIA is that there will be minimal increased volumes and the corresponding impact

10.4.3. I note that all works on public roads will be subject to the approval of a road opening licence application, which will include the preparation of a detailed traffic management plan. Given that a road opening licence will be required to implement the development in agreement with Meath County Council and that the development relates to an underground cable, in my opinion, the proposed development would not endanger public safety by reason of traffic hazard or obstruction of road users. As such, I consider that the provisions of this Article do not apply in this instance and that the subject development is not de-exempted by article 9(a)(vii) of the Planning and Development Regulations 2001.

11.0 Recommendation

11.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the underground MV ducting and cabling linking existing and proposed substations is or is not development or is or is not exempted development:

AND WHEREAS Highfield Solar Limited requested a declaration on this question from Meath Council and the Council issued a declaration on the day of 25th of February, 2025 stating that the matter was development and was not exempted development:

AND WHEREAS Highfield Solar Ltd., referred this declaration for review to An Bord Pleanála on the 12th day of March, 2025:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

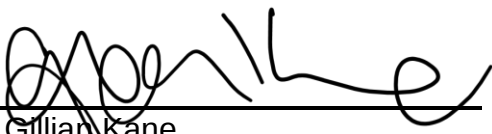
- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the sites,

AND WHEREAS An Bord Pleanála has concluded that

- (a) the laying of the underground cables comes within the scope of Sections 2(1) and 3(1) of the Planning and Development Act 2000, as amended, and therefore constitutes development,
- (b) the referrer in this case, Highfield Solar Limited, is a statutory undertaker and an electricity undertaking, within the meaning of Article 3(3) of the Planning and Development Regulations 2001, as amended,
- (c) the carrying out by the referrer of the development in question comes within the scope of Class 26 of Part 1 of Schedule 2 to these Regulations and is, therefore, exempted development, and
- (d) the restrictions on exemption set out in Section 4(4) of the Planning and Development Act 2000, as amended, and set out in Article 9(a)(vii) of the Planning and Development Regulations, 2001, as amended, do not apply in this instance

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the underground MV ducting and cabling linking existing and proposed substations is development and is exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.



Gillian Kane
Senior Planning Inspector

18 June 2025

Form 1 - EIA Pre-Screening

Case Reference	ABP-322060-25
Proposed Development Summary	Whether the underground MV ducting and cabling linking existing and proposed substations is or is not development and is or is not exempted development
Development Address	Downestown & Gillinstown, Duleek, Co. Meath
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ No, No further action required.

Inspector:  Date: 18 June 2025