

Draft Kildare County Development Plan
c/o Administrative Officer
Forward Planning
Aras Chill Dara
Devoy Park
Naas
Co. Kildare

23 May 2022

Re: Submissions to Draft Kildare County Development Plan.

Dear Sir/Madam,

We wish to make the following submissions in relation to the draft Kildare County Development Plan:

Section 15.11.2 of the draft KCDP states:

15.11.2 Applications Proximate to Overhead Lines

In determining applications proximate to overhead power lines the planning authority will have regard to the clearance distances as recommended by the Electricity Supply Board (ESB):

- *For development in proximity to a 10kv or a 38kv overhead line, no specific clearance is required by the ESB.*
- *For development in proximity to a 110kv overhead line, a clearance distance of 20 metres either side of the centre line or 23 metres around a pylon is recommended.*
- *For development in proximity to a 220kv overhead line, a clearance distance of 30 metres either side of the centre line or around a pylon is required*

It is our submission that the inclusion of the non-statutory 'clearance distances' for electricity lines in the Kildare County Development Plan is inappropriate and *Ultra Vires* the powers of the Council to include in the proposed County Development Plan for the following reasons:

1. Sections 19 & 20 of the Electricity (Supply) (Amendment) (No. 2) Act, 1934.

There are well established legislative provisions governing the erection of buildings and structures in proximity to electricity lines of all voltages.

Sections 19 & 20 of the Electricity (Supply) (Amendment) (No. 2) Act, 1934 ("the 1934 Act") provide that the decision on the restriction or prohibition on the erection of buildings or structures proposed in proximity to electricity lines is a Ministerial function and not a function of the ESB.

A copy of sections 19 & 20 of the 1934 Act is attached at Appendix 1.

Section 20 of the 1934 Act requires that a person who intends to build within a particular distance of an electricity line notifies the ESB (or Eirgrid in the case of transmission lines) at least two months prior to erecting the proposed building or structure.

Section 19 of the 1934 Act provides that where the proposed building or structure involves a risk to the build or structure or to the public and where the ESB decides not to move the electricity line to another site, the ESB may apply to the Minister for a Building Prohibition Order.

Section 19 also contains provisions permitting the landowner to object to any Building Prohibition Order issued by the Minister and, inter alia, for the Minister to hold a public inquiry into the matter where a building prohibition order may be amended or revoked.

Accordingly, the inclusion of non- statutory 'clearances distances' in the manner proposed in the draft Kildare County Development Plan seeks to usurp the powers of the Minister under the 1934 Act in circumstances where decisions in relation to the erection of buildings and the prohibition of building within particular distances of electricity lines is a Ministerial function.

Furthermore, the potential imposition of non-statutory 'clearance distances' by Kildare County Council through its development plan and/or the planning process is an interference with constitutionally protected property rights which could leave the Council open to claims for compensation.

2. No statutory restriction on development in proximity to overhead lines:

The issue of development in proximity to electricity lines was considered by An Bord Pleanala in the application for the 400kV North South Interconnector made by Eirgrid plc under ABP ref. VA 0017.

The Inspector's report for the Eirgrid 400 kV North South Interconnector set out the following:

*During the application for approval and oral hearing, the applicant argues that the proposed development does not result in sterilisation of lands i.e. that **there is no statutory restriction in relation to development in proximity to overhead lines**. This position is reflected in ESB/IFA Code of Practice which refers to the statutory requirement to inform ESB if it is the landowner's intention to erect a building or structure within 25 yards (23m) either side of any transmission wire. (emphasis added)*

***Whilst I accept therefore that there is no statutory impediment to building in proximity to overhead line infrastructure**, having regard to my view that, in certain circumstances (above), the proposed development may have a negative impact on property prices and ability to sell, I would accept that in similar circumstances the proposed development may impact on the development potential of land and/or property in the vicinity of the route. (emphasis added)*

*However, in this instance I refer the Board to the provisions of the ESB/IFA Code or Practice which clearly makes provision **for the alteration of the overhead line or compensation if the line interferes with any future viable development of lands** (and formal arbitration in the event that agreement cannot be reached). Having regard to these provisions, I do not consider that the proposed development will give rise to significant impacts on the development potential of land or property in the immediate vicinity of the route. (emphasis added)*

A copy of the extract from the ABP Inspector's report for VA 0017 is attached at Appendix 2.

It is noted from the foregoing that both An Bord Pleanála and Eirgrid (the applicant) accept that there are no statutory restrictions on development in proximity to overhead electricity line infrastructure and that the provisions of the ESB/IFA Code of Practice allow for the alteration of an overhead line (or compensation) if the line interferes with the development of lands.

Accordingly, the inclusion of restrictions on development in proximity to electricity lines as set out in section 15.11.2 of the Kildare County Development plan flies is incorrect and ultra vires the powers of Kildare County Council to adopt.

3. ESB Policy Towards Landowners for Overhead Lines:

The Electricity Supply Board holds a long-standing policy for addressing potential conflicts between development of land and electricity lines crossing privately owned land. A copy of the ESB Policy Towards Landowners for Overhead Lines is attached at Appendix 3.

It should be noted that the ESB Policy Towards Landowners does not specify any restriction on development of land arising from electricity lines but rather sets out at clause 7 that:

7. (i) If in the future the line interferes with any viable development of land other than cultivation of the soil and the Board is so satisfied, the Board shall either:

- *raise or otherwise alter the line to permit the development in full, or*
- *pay for the loss caused by interference of the line with the development,*
- *raise or otherwise alter the line to permit partial development and for the loss caused by interference of the altered line with the development.*

Also, clause 8 of the ESB Policy Towards Landowners includes that:

Anyone who intends to erect a building or structure within 25 yards on either side of any transmission wire is statutorily bound under penalty to give at least two months notice in writing to the Board and to state all relevant particulars of such building/structure.

It is evident from the ESB's own Policy Towards Landowners for Overhead Lines that the ESB will alter electricity lines to permit development in full, will partially alter lines and/or will pay compensation where lines interfere with development.

Based on the ESB's stated policy in relation to handling of conflicts between development and electricity lines, the recommendation or requirement for mandatory restriction on development as set out in section 15.11.2 of the draft Kildare County Development Plan cannot be reconciled with ESB policy.

4. Conclusion:

We request that the CEO considers the foregoing submissions and addresses the following points in their report in the context of removing section 15.11.2 from the draft Kildare County Development Plan.

1. The existing legislative provisions under sections 19 & 20 of the 1934 Act provides a process for dealing with development proposed in proximity to electricity lines of all voltages.

2. Under the 1934 Act, it is the Minister, not the ESB or Kildare County Council, that holds the decision on whether buildings or structures may be built in proximity to overhead lines.
3. There are no statutory restrictions on buildings or development in proximity to overhead lines.
4. ESB operates a Policy and a Code of Practice whereby lines in conflict with development are altered and/or compensation is paid to the landowner.

Based on the foregoing, it is our submission that the inclusion of non-statutory 'clearance distances' in section 15.11.2 of the draft Kildare County Development Plan is inappropriate and is *ultra vires* the powers of Kildare County Council to include.

We submit that a motion be put to the Members to remove section 15.11.2 from the draft County Development Plan and that wording be inserted that reflects the requirements of the statutory provisions of sections 19 & 20 of the 1934 Act.

Yours sincerely,

Lar McKenna

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