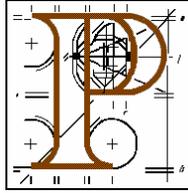


An Bord Pleanála Ref. No.:

PL 61.233341

An Bord Pleanála



Inspector's Report

Proposed Development: Permission for the retention of 2 no. 38kv lattice steel masts at Westside Park, Siobhan McKenna IRd. & Circular Road, Ragoon, Galway.

Planning Application

Planning Authority:	Galway City Council
Planning Authority Reg. Ref.:	08/483
Applicant:	ESB
Type of application:	Permission
Planning Authority Decision:	Grant permission

Planning Appeal

Appellants:	Ms. Catherine Connolly Residents of Claremount Park
Observers:	Cairde na Gaillimhe
Type of appeal:	Third Party against permission
Date of Site Inspection:	02.07.2009
Inspector:	A. Considine

1.0 THE SITE

- 1.1 The subject site is located on the edges of the extensive sports and recreation area in the Newcastle / Shantalla area of Galway City at Westside Park. The affected areas relate to the north west and the north east corners of the park.

2.0 PROPOSED DEVELOPMENT

- 2.1 Permission is sought for the retention of 2no. 38kv masts. These masts have replaced the previous masts which were located in the general vicinity of the current masts.

3.0 REPORTS ON PLANNING AUTHORITY FILE

- 3.1 The planning application was accompanied by the following additional reports:

- A letter from Galway City Council, Corporate Services Section, indicating consent for the making of the application on Council owned lands.
- A letter from the ESB, Network Projects, Galway Section, detailing the following information:
 - the masts are replacements of the masts which existed
 - the work is part of the works for the Salthill 110kV Station and will enable the removal of all lines crossing the park

- 3.2 There are 3 no objections noted on the Planning file from the The Shantalla Residents Association, Cllr Catherine Connolly and from the Claremont Park Residents, including 97 signatures. Cllr Catherine Connolly and the Claremont Park Residents are the appellants in this instance and issues raised are similar to those in the grounds of appeal.

- 3.3 There are 2 no interdepartmental reports from Galway City Council on file:

Parks Section: the report notes that the removal of overhead lines across the park has improved the safety and amenity of the park. It is unfortunate that one of the masts had to be relocated closer to the playground. The accommodation of the mast at this location will be subject to the ESB funding the relocation of the existing playground facilities.

HSE: No objection to the development on the grounds of public health.

- 3.4 The Planning Authority sought additional information in relation to the following issues:

- can the lines be undergrounded, relocated away from the playground or proposals for the funding of the relocations of the play facilities
- are additional security measures required
- details of previous ESB infrastructure on and around the park which the proposed masts replaced.

- 3.5 Following receipt of a response to the above further information request, two objectors (both appellants) made additional submissions to the planning file.

4.0 DECISION OF THE PLANNING AUTHORITY

- 4.1 The Planning Authority decided to grant permission for the development subject to 2 no. conditions.

5.0 RELEVANT PLANNING HISTORY

The following planning history relates to the subject site:

73/159: Permission was granted to the ESB to divert 2 no. 38kv lines at Ragoon. These lines were diverted to facilitate the provision of sports facilities for the Newcastle / Shantalla area.

6.0 DEVELOPMENT PLAN

- 6.1 The subject site has an RA zoning under the Galway City Council Development Plan. This zoning objective is *To provide for and protect recreational uses, open space, amenity uses and natural heritage.*

Section 8.11 of the City Plan deals with Energy and Associated Infrastructure. This section notes that *the development of diverse and efficient energy supply, whether it is gas or electricity, is a necessary catalyst for the future social and economic development of the city as a gateway and for attracting investment. The Council recognises that the development of a secure and reliable electricity transmission infrastructure is a key factor in supporting economic and physical development.*

Policy no. 8.11 - Energy and Associated Infrastructure states:

- *Support the infrastructural renewal and development of electricity networks in the city, underground where at all possible, including the overhead HV lines necessary to provide the required networks.*

7.0 GROUNDS OF APPEAL

There are two third party appeals in relation to this development and the grounds of appeal are summarised as follows:

1. The masts were erected illegally and concern is raised that a body like the ESB should undertake such development, without the benefit of permission.
2. The visual impact of the two remaining masts, which are twice the size of the original masts, are an eyesore and will affect the value of the park and houses in the adjacent estates.

3. Health and safety issues regarding the location of the masts near two children's play areas, the playground and the skate park. There was no consultation regarding the location of the masts or the upgrading of the power station to a high voltage station.
4. Undergrounding of the lines is a legitimate and feasible request
5. The financial offer to compensate for the playground is not satisfactory as no timeframe for the relocation has been indicated and the proposed location is further away from the original location. The chosen location is not suitable as it is close to an area used by older children and adults.
6. The proposal presented to the public was a fait-acompli and residents were not part of the negotiations.

8.0 RESPONSES

8.1 Planning Authority:

The Planning Authority has made no response in relation to this appeal.

8.2 First Party:

The ESB has responded to the appeal providing a background to meetings, consultations and the necessity of the works. It is further contended that the works being undertaken was exempt from planning under Section 4 of the Planning & Development Act, 2000 and Class 28 of the Planning & Development Regulations, 2001 and that the ESB is entitled to alter an existing 38kv overhead line, including the diversion of such a line within a 40m corridor.

A commitment is given from the ESB that the mast on Circular Road will be relocated in the future and that the timeframe for this is dependant upon having other reinforcement projects completed.

8.3 Further responses:

8.3.1 Residents of Claremont Park to the ESB Response to Appeal:

- The issues raised in the ESB response are irrelevant and do not address the concerns raised.
- An informal meeting with one elected councillor and an unidentified residents association is inadequate in terms of respecting planning procedures.
- In relation to the relocation of the playground, the commitment is inadequate as no time frame is provided.
- If the line is to be relocated in the future, it should be relocated now.

8.3.2 Cllr. Catherine Connolly also responded to the ESB response to the appeal. The comments made are generally in line with those above, and a concern that permission from the City Council was not provided. It is further stated that over €100,000 of public money has been spent in the provision of the play facilities in question and to ignore this is shocking.

9.0 OBSERVERS TO APPEAL

There is 1 observer noted in relation to this appeal, from Cairde na Gaillimhe, which supports the appeals of Cllr Catherine Connolly and concerned residents. The issues raised by the observer are very similar to those raised in the grounds of appeal.

10.0 ASSESSMENT

10.1 Having regard to the relevant policies pertaining to the subject site, the nature of existing uses on the site, the nature and scale of the proposed development and the nature of development in the immediate vicinity of the site, as well as the planning history of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. The principle of the development & the Visual Impact
2. Other Issues

10.2 Principle of development & the Visual Impact

It is the stated policy of Galway City Council to support the infrastructural renewal and development of electricity networks in the city, underground where at all possible, including the overhead HV lines necessary to provide the required networks. It is further noted that the development of public utilities is considered as a use which may contribute to the zoning objectives, dependent on the RA location and scale of development. In this regard, it is considered that the proposed development is acceptable and is in accordance with the requirements of the City Development Plan, in principle.

In terms of the location of the subject masts, it is to be noted that permission was granted in the 1970s for the diverting of two 38kv lines which included the provision of 9 no type O masts, double wood poles, and 3 no type Q masts, in the vicinity of the park and sports ground. The design of those permitted type Q masts is similar to the two masts, the subject of this appeal in terms of design and scale.

The appellants raise issues regarding the visual impact of the two remaining masts, and indicated that they *are twice the size of the original masts, are an eyesore and will affect the value of the park and houses in the adjacent estates*. The proposed masts have a height of 13m with a base width of 4.4m while the previous masts, indicated as type Q, had a height of 43ft (13.1m) with a base width of 16ft (4.9m). In this regard, permission was already granted for masts of similar height and scale.

There is a variance in terms of the actual location of the masts, but from the drawings submitted, I consider that this variance is minimal. The mast located at the north eastern corner of the park appears to have replaced 2 permitted double wood poles, identified as type O masts, height 60ft (18.3m) and base

width 12ft (3.7m). The nature of the current mast takes the overhead lines away from the park and as such I consider that there is no objection or concern in relation to the mast at this location.

The mast located adjacent to the playground, on the north western area of the park appears to be the most controversial. From the drawings submitted, I calculate that the mast has been relocated approximately 15m further north than the original mast. The location remains, immediately adjacent to the playground area, and 13m, down from 18m originally, from the playground railings.

I accept the fact that the location of this mast is not ideal, given its proximity to the playground, but I note that the power lines are not traversing the area, and that the mast takes the lines away from the playground. It is further true to say that the removal of the previous network of overhead lines is a welcome improvement in terms of visual amenity, and indeed health and safety for users of the sports facilities and play grounds.

It is to be further noted that it is the intention of the ESB to relocate the offending mast on the Salthill – Spiddal line at some point in the future. In this regard, I consider that the visual impact of the masts is not so significant, or indeed permanent, to warrant a refusal of permission in this instance.

10.2 **Other Issues**

10.2.1 **Health & Safety:**

The appellants raise health and safety issues regarding the location of the masts near two children's play areas, the playground and the skate park and that there was no consultation regarding the location of the masts or the *upgrading of the power station to a high voltage station*. One of the appellants has indicated that they were advised that the existing electric lines were to be upgraded *to high voltage by trebling the current electricity power to 110kv*. In this regard, and having regard to the proximity of the mast to the playground, the issue of health and safety is relevant.

The information submitted clearly indicates that the works undertaken by the ESB in the area, including the undergrounding of lines, are part of the enabling works for the future development of the Salthill 110kv station, and other reinforcement projects currently at planning stage. This, in my opinion, does not imply that the voltage of the existing lines has been increased as contended and the application is for two 38kv masts. In this regard, the voltage of the lines is maintained as always was in the vicinity of the park. It is also notable that there is no objection to the proposed development from the HSE on the grounds of public health.

The appellants also suggest that *undergrounding of the lines is a legitimate and feasible request*. While I concur with this statement, it is not an absolute requirement for the ESB to do so, and the undergrounding of lines to date has been undertaken by agreement.

In terms of the health and safety issues arising from the presence of both of the masts, I consider that the main issue would relate to climbing the mast or indeed, the flying of kites which might hit the overhead lines. In relation to the climbing of the masts, the ESB have a standard mechanism for all their masts and there is no evidence to suggest that this anti climbing guard has failed in other installations. In relation to the flying of kites, it is to be noted that the overhead lines, at 13m above ground level, run in directions away from the public park area and over the roads network rather than the open space network.

In this regard, I consider that the health and safety issues are not so significant to warrant refusal of the development in this instance.

10.2.2 Procedural issues:

1. It is contended by one of the appellants that no evidence of permission for the making of the application on council owned lands was presented in the planning application. A letter of consent from Galway City Council was submitted with the application and is on the public file.

2. It is noted that there is great dissatisfaction with residents in the area of the masts that no public consultation was undertaken in relation to the proposed development. It is stated that the proposal presented to the public was a *fait-acompli* and residents were not part of the negotiations. It is not a requirement for a developer to undertake public consultation.

10.2.3 Exempted Development Issue:

It is contended by the ESB that the developments undertaken fall under the exempted development category of the Planning & Development Act and Regulations. The Planning Authority considered that the development required planning permission, and as such, a planning application was lodged. The appellants also raise the issue that the masts were erected illegally and concern is raised that a body like the ESB should undertake such development, without the benefit of permission.

Section 4(1)(g) of the Planning & Development Act, 2000 states that the following shall be exempted development for the purposes of this Act –

(g) development consisting of the carrying out by any local authority or statutory undertaker of any works for the purposes of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires or other apparatus, including the excavation of any street or other land for that purpose;

Exempted development Class 28 of the Planning & Development Regulations, 2001 provides as follows:

The carrying out by any electricity undertaking of development for the purposes of the undertaking consisting of the construction or erection of an overhead transmission line not more than 40 metres from a position in respect of which permission for such line was granted and which otherwise complies

with such permission, but not a line in respect of which a condition attached to the relevant permission imposed a contrary requirement.

Having regard to the nature of the development proposed, and the information submitted with the planning application, I would consider that the proposed development is in accordance with the above sections of the Planning & Development Act and Regulations. However, as the application was made, it is appropriate to make a decision in this instance.

10.2.4 Relocation of the playground:

It is a requirement of the planning permission granted, that the existing playground adjacent to the mast be relocated within the park, but no clear detail for the proposal has been provided. The condition requires that the ESB provide a site layout plan, liaising with the Parks Section of Galway City Council, be provided and the works carried out. However, no time frame has been provided, and requesting such a facility by condition, in my opinion, precludes public participation in the process.

The appellants contend that the financial offer to compensate for the playground is not satisfactory as no timeframe for the relocation has been indicated and the proposed location is further away from the original site of the playground. It is further indicated that the possible location adjacent to the skate park is not suitable as it is close to an area used by older children and adults. I would agree with the appellants in this instance.

While the relocation of the playground may be considered desirable, I consider that there is no specific requirement for such a relocation. However, if it is to be relocated, in the interests of health and safety, I consider that it should not be located too far from its current site in order to maintain a balance of facilities within the park. In this regard, should the Board be minded to include a condition regarding the relocation of the playground, I recommend that it be moved no further than 70m in a north easterly direction from the mast (located at the north western corner of the park). Proposals for intended uses of the area currently occupied by the playground should also be detailed in any overall proposal.

11.0 CONCLUSION & RECOMMENDATION

11.1 **Conclusion:**

Having regard to the nature of the electricity installation for which retention is sought, including the indication that it is the long term intention to relocate the mast at the north western area of the park, and the nature of what was replaced by the two masts, I consider that the visual impact of the two masts is not so significant to warrant a refusal in this instance. I further consider that the proposed development is in accordance with Galway City Council policy to support *the infrastructural renewal and development of electricity networks in the city, underground where at all possible, including the overhead HV lines necessary to provide the required networks*, and as such, the development is in accordance with the proper planning and sustainable development of the area.

11.2 Recommendation:

It is recommended that permission be **Granted** for the proposed development. In terms of attaching conditions, I consider that the proposed development requires none. In relation to the requirement to relocate the playground, I consider that such a development is exempted under Class 36(a) of the Planning & Development Regulations, which states:

Development consisting of the carrying out by or on behalf of a State authority or other public body, on land used by the authority or body as a public park, of works incidental to that use, including the provision, construction or erection of any structure in connection with or for the purposes of the enjoyment of the park or which is required in connection with or for the purposes of the management or operation of the park.

However, should the Board be minded to include a condition regarding the relocation of the playground within the park, and I consider that the issue be dealt with by way of special contribution from the ESB to redevelop the playground, and that Galway City Council undertake the works. The playground should not be relocated further than 70 metres east of the mast.

As such, I recommend that the following condition be attached to a grant of permission:

REASONS & CONSIDERATIONS

1. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of the relocation of the playground at Westside Park. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board for determination. The contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

A. Considine
Planning Inspector
16th July 2009