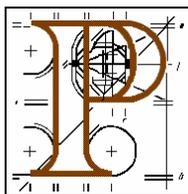


# An Bord Pleanála



## Inspector's Report

**PL02. 243341**

**DEVELOPMENT:** Telephone mast and ancillary structures

**ADDRESS:** Curragho, Billis, Co. Cavan

### PLANNING APPLICATION

**Planning Authority:** Cavan County Council

**Planning Authority Reg. No.:** 13/159

**Applicants:** Vodafone Ireland Ltd

**Application Type:** Permission

**Planning Authority Decision:** Refuse permission

### APPEAL

**Appellants:** Vodafone Ireland Ltd

**Type of Appeal:** 1<sup>st</sup> party vs. refusal

**Observers:**  
1. Aidan Rothwell  
2. M. O'Gorman

**DATE OF SITE INSPECTION:** 1<sup>st</sup> July 2014

**INSPECTOR:** Stephen J. O'Sullivan

## **1.0 INTRODUCTION**

- 1.1 This report deals with a first party appeal against a decision of Cavan County Council to refuse permission for a 'phone mast in a rural area.

## **2.0 SITE**

- 2.1 The site is in a rural area c2km north-east of the centre of Cavan town and c500m east of N3 by-pass road past the town. The area is undulating with numerous drumlins. The site occupies a position at the top of one of them, with the land sloping down to both the north and south towards county roads. There is extensive ribbon development of house along those roads.

## **3.0 PROPOSAL**

- 3.1 It is proposed to erect a monopole mast 24m high with a base level of 122m AOD. It would stand in a compound measuring 12m by 12m defined by a 2.4m palisade fence that would also contain an equipment cabinet. Access to the site would be taken from existing agricultural gate on the public road to the south east.

## **4.0 POLICY**

- 4.1 The minister issued guidelines to planning authorities on telecommunications antennae and support structures in July 1996. They state a general policy in favour of the development of telecommunications infrastructure. Section 4.3 refers to visual impact, stating that it is an important consideration for development control. In most cases the applicant will only have limited flexibility as regards the location of support structures for antennae. Care should be taken with fragile or sensitive landscapes. Some masts will remain noticeable in spite of best precautions. Views of masts from tourist routes may be intermittent or incidental without being obtrusive. Ruling out masts on hilltops may be counter-productive. Where there is an existing mast every effect should be made to share. The guidelines were modified by circular letter PL07/12 from the minister which re-emphasized the policy supporting telecommunications infrastructure due to the need for broadband services, especially in rural areas. The letter advised against temporary permissions and bonds for the removal of masts. It advised against specifying minimum separation distances between masts and houses. It reminds planning authorities that they do not have competence on matters of health and safety. It advises that waivers from development contributions should be provided for broadband infrastructure, but recognises that this is a function of the elected members.

- 4.2 The Cavan County Development Plan 2014-2020 applies. The site is in an area identified as being under strong urban influence around Cavan town. The site is not in an area designated for natural heritage or scenic amenity. Section 4.8 of the plan refers to Mobile Phone Network Development. It states –

*The Planning Authority recognises the need in the national interest and in compliance with the NDP to support the extension of the telecommunications network throughout the County as part of the National and International economy.*

*Objectives -*

*PIO118 To encourage the co-location of antennae on existing support structures and to require documentary evidence, as to the non availability of this option, in proposals for new structures. The shared use of existing structures will be required where the numbers of masts located in any single area is considered to be excessive. The Planning Authority will generally consider any location with three or more separate support structures as having no remaining capacity for any further structures.*

.....  
*PIO121 Masts will only be permitted if supported by an acceptable 'Visual and Environmental Impact Assessment Report'.*

.....  
*PIO125 To submit a reasoned justification as to the need for the particular development at the proposed location, in the context of the operator's overall plans to develop a network and the plans of other operators. To provide details of what other sites or locations where considered and include a map showing the location of all existing telecommunication structures, whether operated by the applicant or by a competing company, within 1km of the proposed site and reasons why these sites were not feasible.*

*PIO126 When antennae and their support structures are no longer being used and no new user has been identified to ensure that they are removed and that the site is re-instated at the operator's expense and to the Council's satisfaction. Permissions granted will contain a bonding arrangement to this effect. It shall also be an obligation of the original operator to inform the Council if they intend to dispose of the site to another suitable operator.*

## **5.0 HISTORY**

- 5.1 No relevant planning applications pertaining to the site were cited by the parties.

## **6.0 DECISION**

6.1 The planning authority decided to refuse permission for the following reason –

- a) *Having regard to the guidelines relating to telecommunications antennae and support structures which were issued by the Department of the Environment and Local Government to planning authorities in July 1996 particularly with respect to section 4.3*
- b) *Having regard to the proximity of the site to high density of existing residential property*
- c) *Having regard to the overbearing nature of the proposed structure particularly when viewed along the Local Primary Road L-1533 at Curragho Td., Billis and the residential properties along the road, in particular, that 17no. dwelling houses are located within 500m of the proposed new mast, it is considered that the proposed development would be visually obtrusive and overbearing and would seriously injure the amenities of the area or depreciate the value of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

## **7.0 REPORTS TO THE PLANNING AUTHORITY**

7.1 Submissions – Numerous third parties objected to the proposed development on grounds similar to those set out in subsequent observations on the appeal.

7.2 Area Engineer – The report on the initial application stated that sightlines are restricted at the proposed access. The report on the further information stated no objection to the development.

7.3 Planner's report – The report notes that the circular letter PL07/12 from the minister to planning authorities states that those authorities do not have competence for health and safety matters. The proposed 24m high monopole at least 350m-450m from houses would have a negative impact on the amenities of occupants. The use of the existing agricultural entrance is a potential traffic hazard. Further information should be sought, including a response to third party submissions, plans to achieve sightlines at the access and a revised visual impact report. The subsequent report stated that the revised access proposals were acceptable. The visual impact report does not demonstrate the full impact of the proposed development on the adjacent residential dwellings. Alternative sites on higher ground have not been fully explored. It was recommended that permission be refused.

## **8.0 GROUNDS OF APPEAL**

8.1 The grounds of appeal can be summarised as follows –

- The proposed development is in keeping with the 1996 guidelines, the Development Management Guidelines and the provisions of the development plan. The principle of the development may be assumed because the planning authority's decision referred to section 4.3 of the guidelines. The site is in a hilly, rural area which is not a fragile or sensitive landscape nor along a major tourist route. That section of the guidelines accept that the location of masts will be determined by radio engineering requirements and may remain quite visible in rural landscapes.
- The development is of strategic importance for the improvement of mobile communications services. Vodafone has a coverage deficit in the Billis area. There is no existing structure on which antennas could be mounted to remedy this. Access to broadband is a key issue for the future of the rural economy.
- The proximity of the site to residential development is not a valid reason for refusal. Similar developments are often closer to houses in urban areas. The applicant has demonstrated the need for the development in this area and followed a sequential approach which demonstrates that co-location on an existing structure would not meet this need.
- The visual impact of the development would be acceptable. The site is not within a site designated for natural heritage or visual amenity. The landscape is hilly and a high position is required for the proposed antennae to fulfil their function. The guidelines accept that some telecommunications facilities will remain visible in rural areas. The site has the benefit of existing screening from the trees there. The proposed mast would be 1m to 1.6m wide.
- The board have previously ruled that there is no evidence that a development of this nature can have an impact on the value of property, cf PL02. 236307 and PL02. 216361.

## **9.0 OBSERVERS**

9.1 The observation from Mr Aidan Rothwell objects to the development on the following grounds –

- The second site notice was not erected in accordance with the regulations. The amended proposal to use a different agricultural access for industrial purposes necessitated a new application. The applicant does not have the permission of the owner of that entrance for the application. The description of the development is inaccurate in that it

refers to improvement of the existing 3g and GSM network, with the application consistently refers to 4G usage of the mast, which is a newer technology that emits more radiation.

- The local road L1533 is part of a looped walk and is regularly used by locals and tourists. The national monument is of international importance and is recorded in the development plan. There are 10 protected monuments within 1km and 4 within 500m. The raths are in alignment, with a cut out allowing a view from one to another through the third. The proposed mast will interrupt this alignment. The area has a typical undisturbed drumlin landscape. The upgrade of the access road will scar the landscape.
- The development would diminish local property values.
- The planning authority refused permission because the development materially contravened the development plan and so section 37(2) of the planning act applies. Undue reliance should not be placed on general national policies to support a development that would have serious negative implications for visual intrusion, landscape, settlement pattern and proper site assessment. The applicant has not demonstrated a proper search of alternative sites for the antennae, including co-location sites in accordance with policy PI0118 of the development plan.
- There is a high density of development in the area, including 2 schools and a pre-school facility within 1km of the site. The site is elevated and a mast upon it could not be screened. Neither the 1996 guidelines nor the development plan establish an acceptable separation distance between a house. The rear of many houses will face the proposed mast. The visual amenities of the area have already been blighted with a proliferation of masts and should not be further injured. The visual impact report submitted by the applicant is minimalist and repetitive. The applicant may remove the trees near the mast. Antennas will be attached to the proposed monopole.

9.2 The observation from M. O’Gorman may be summarised as follows –

- The radio signals from the development may be a hazard to health.
- The applicant should assess other sites further from residential properties for its requirements. The current proposal should be assessed with regard to the policy in favour of clustering or co-locating telecommunications facilities.
- Other designs or locations for the mast may have less visual impact than the proposed development.

- The observer's property would be devalued by 30% as a result of the development.
- The proposed development should be assessed in relation to the policies in the development plan regarding co-location, visual amenity and other objectives.

## **10.0 RESPONSES**

10.1 The planning authority's response to the appeal stated that it agrees in principle that development of this nature should be provided but contends that the specifics of an appropriate location have not been met. The issue is whether the development would have an adverse impact on the visual and residential amenities of adjacent houses. The visual impact report submitted with the application was not adequate. The planning authority implies that that the development would seriously injure the amenities or depreciate the value of property in the vicinity. The planning authority does not object to the development of telecommunications infrastructure for the county but in this instance it has not been demonstrated that suitable alternatives have been fully examined.

10.2 The observation from Aidan Rothwell was circulated for comment. The planning authority's response stated that it had no comment. M. O'Gorman endorsed the contents of that observation. The applicant's response states that the revised access proposal was made following a request for further information and would not require a new application. The applicant would use the proposed facility for new technologies as they emerge. The proposed mast is not within a site or archaeological potential. The applicant's case is otherwise re-stated.

## **11.0 ASSESSMENT**

- 11.1 Both national and local planning policy favours development to provide telecommunications infrastructure. The applicant has provided a reasoned justification for the location of the proposed mast, having regard to an existing gap in coverage; the proximity of the N3 national primary road; the growth in data traffic on the mobile telephony network; and the proximity of other structures that might be used to address the existing deficiency in coverage. The submission from the planning authority and third parties do not provide any persuasive grounds to refute the applicant's arguments in this regard.
- 11.2 The site is not covered by any designation for scenic amenity, natural or cultural heritage. The rural landscape in the area is attractive but it is not particularly sensitive or fragile. It has been modified by the extensive residential development there. The proposed development would not seriously injure the character or amenities of the area and it would not contravene the advice given at section 4.3 of the 1996 guidelines. The fact that this hilltop does not contain a recorded monument while many others in the vicinity do would tend to support the applicant's choice of location for the proposed development. The mast would be a considerable distance from any house and it would not overbear or intrude on any residential property in a manner that would seriously injure its amenities. The proposed mast might have an impact on the sale price that might be achieved for the closest houses, or it might not. That would depend on the subjective opinion of a potential purchaser. Nearly every decision made under the planning system would affect the relative value attached to some property, either directly or indirectly. The possibility of such an effect would not justify refusing permission for a development that would be in keeping with public planning policy and whose objective impact on the amenities of adjacent property would not be significant.
- 11.3 No defect in the publication of the application has arisen that would preclude a consideration of a grant of permission at this time in the normal manner. The planning authority did not refuse permission on the basis of a material contravention of the development plan and section 37(2) of the planning act does not apply in this case.

## **12.0 CONCLUSION**

- 12.1 the proposed development would be in accordance with the proper planning and sustainable development of the area.

## **13.0 RECOMMENDATION**

- 13.1 I recommend that permission be granted subject to the conditions set out below.

## REASONS AND CONSIDERATIONS

Having regard to the policies in favour of development to provide telecommunications infrastructure set out in the *Guidelines for Planning Authorities on Telecommunications Antennae and Support Structures* issued by the minister in July 1996, as amended by Circular Letter PL07/12 in October 2012, and in section 4.8 of the *Cavan County Development Plan 2014-2020*, to the character of the landscape in which the site lies, to the scale and form of the proposed mast and to the distance between it and the houses in the locality, it is considered that, subject to the conditions set out below, the proposed development would not have a negative impact on the character of the area or the amenities of property in the vicinity and would be in keeping with the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 10<sup>th</sup> day of March 2014 except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.

**Reason:** In the interest of public health.

3. Details of the proposed colour scheme for the telecommunications structure, ancillary structures and fencing shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

**Reason:** In the interest of the visual amenities of the area.

4. Landscaping of the site shall be carried out in accordance with a landscaping scheme which shall include hedging planted inside the boundary fence, which shall be submitted to and agreed in writing with planning authority prior to the commencement of development.

**Reason:** In the interest of the visual amenities of the area.

5. In the event that the development is no longer required for the provision of telecommunications services, the structures herein authorised shall be removed by the site by their last operator at its own expense and the site reinstated to its prior agricultural condition to the satisfaction of the planning authority.

**Reason:** in the interests of orderly development.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Stephen J. O'Sullivan  
7<sup>th</sup> August 2014