



An
Bord
Pleanála

Inspector's Report PL06S.246944

Development	Continued use of the existing 25m high free standing monopole communication structure carrying antenna and communication dishes at ESB Telecommunications Compound, Nangor Road, Clondalkin, Dublin 22.
Planning Authority	South Dublin County Council.
Planning Authority Reg. Ref.	SD16A/0164.
Applicant(s)	ESB Telecoms Ltd.
Type of Application	Retention Permission.
Planning Authority Decision	Grant permission with conditions.
Appellant(s)	ESB Telecoms Ltd. (First party vs. Condition 2)
Observer(s)	None.
Date of Site Inspection	None.
Inspector	Ciara Kellett.

1.0 Site Location and Description

- 1.1. The appeal site is located south-east of the intersection of the New Nangor Road (R134) and the Grange Castle Road (R136) in Clondalkin, Dublin 22. Grange Castle Business Park is to the north-west of the intersection. The site is accessed from the Old Nangor Road.
- 1.2. The site is stated as being 0.1Ha and the area in the vicinity of the site is open and undeveloped. Scoil Mochua is located to the east and further east there is residential development. A large tract of undeveloped land is located to the south of the site. No site visit has been undertaken because this is an appeal against a condition only.
- 1.3. Appendix A includes copies of zoning maps.

2.0 Proposed Development

The planning application requests the continued use of the existing 25m high free standing monopole communication structure carrying antenna and communication dishes (total height including antenna 28m) within an existing 2.4m high palisade compound previously granted temporary permission Ref. SD11A/0093.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a decision to **grant permission** subject to 4 conditions. Condition no.2 is relevant to this appeal. It states:

The site is located within largely undeveloped residentially zoned lands which have been identified as a housing capacity site in Map 1.3 of the County Development Plan 2016 - 2022. A permanent grant of planning permission would not be appropriate on this site prior to the determination of a comprehensive residential development of the lands. This permission is for a period of 3 years from the date of

final grant of planning permission. The telecommunications structure and related ancillary structures shall then be removed unless, prior to that date, planning permission has been granted for retention for a further period by the Planning Authority or by An Bord Pleanála on appeal.

Reason: *In the interest of ensuring no impediment to comprehensive residential development of appropriately zoned lands and to assist in achieving the core strategy of the County Development Plan 2016 - 2022.*

3.2. Planning Authority Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Notes zoning objective of the site, *RES: To protect and/or improve residential amenity*. Land on the southern side of the Old Nangor Road is zoned *RES-N: To provide for new residential communities in accordance with approved area plans*. Public Services are permitted in principle under the zoning objective for the area.
- Refers to two previous planning permissions granting temporary permissions.
- Notes that the site is an existing shared site for mobile telephony equipment and considers site acceptable.
- Site is visually acceptable.
- With respect to the duration of the permission considers exceptional circumstances exist given its location within a bank of undeveloped residential zoned land. Considers a five-year permission should be applied.
- Concludes that a five-year duration permission should be applied, but the condition applied in the second schedule refers to a three-year permission.
- The decision was in accordance with the Planning Recommendations.

3.3. Third Party Observations

None recorded on file.

4.0 Planning History

4.1. There are three planning permissions on the site:

- Reg. Ref. SD06A/0344: Permission granted for the erection of a 25m high, free standing monopole communications structure, carrying antennae and communications dishes with associated ground-mounted equipment cabinets (exempted development) to share with other licenced operators within an existing 2.4m high palisade compound at ESB's existing Nangor Road telecommunications site. Condition no.2 restricted the permission to a period of five-years.
- Reg. Ref. SD08A/0063: Permission granted for the attachment of antennae and associated equipment.
- Reg. Ref. SD11A/0093: Permission to retain the existing equipment and permission to attach additional antennae and dishes. Condition no.2 restricted the permission duration to a further five-year period.

4.2. There is permission for a Mixed Use Development Reg.Ref. SD07A/0492, granted permission by the Board (PL06S.228979) on the adjacent site immediately to the east. The development was for a new national resource centre to provide respite accommodation applied for by the Spina Bifida and Hydrocephalus Association. No works have taken place to date.

5.0 Policy Context

5.1. South Dublin County Development Plan 2016 – 2022

Chapter 1 of the County Development Plan (the Plan) refers to the Core Strategy which includes the Settlement Strategy. Chapter 2 of the Plan refers to Housing and Chapter 7 refers to Infrastructure & Environmental Quality. Chapter 11 refers to Implementation including the Land Use zoning matrix.

Map 1.3 in Chapter 1 identifies the site and surrounding lands as one of a number of “Capacity Sites”. Section 1.6.4 of the Plan states the following with respect to housing capacity:

“In January 2015, the remaining housing capacity of the 2010-2016 South Dublin County Development Plan was 34,294 units. The RPG housing allocations for South Dublin would require 39,649 additional housing units from January 2015 to the end of 2022. This results in a capacity shortfall of 5,355 housing units. Capacity has been identified for a further 5,849 units, through sustainable intensification; development on brownfield sites; on a number of smaller infill sites and on Local Area Plan and SDZ areas. The zoning objective of a number of sites has been amended to support development, should economic, market and demographic factors warrant this level of output....”

Section 1.7.2 notes with respect to Clondalkin:

“The Towns of Tallaght, Lucan and Clondalkin are designated as Metropolitan Consolidation Towns in the RPGs Settlement Hierarchy. Metropolitan Consolidation Towns are located close to Dublin City and function as part of the Dublin Gateway. These towns will continue to be developed at a relatively large scale as part of the consolidation of the Metropolitan Area, will continue to support key public transport corridors and be important locations for services, retail and economic activity”.

Section 7.4.0 of the Plan considers Information and Communications Technology. The Plan states *“The widespread availability of a high quality Information and Communications Technology (ICT) network within the County will be critical to the development of the County’s economy, and will also support the social development of the County”.* A number of objectives are listed with respect to masts and antennae.

“IE4 Objective 3: To permit telecommunications antennae and support infrastructure throughout the County, subject to high quality design, the protection of sensitive landscapes and visual amenity.

IE4 Objective 4: To discourage a proliferation of telecommunication masts in the County and promote and facilitate the sharing of facilities”.

Table 11.2 and Table 11.3 of Chapter 11 lists “Public Services” as being “permitted in principle” in areas zoned RES and RES-N.

Schedule 3 of the Plan is the South Dublin County Council Interim Housing Strategy 2016. Section 4.6 states:

“The CSO Report is projecting a significantly lower population for the County in 2022 than the RPGs. This results in a different housing target for the County of 32,132 units for the period 2015 to the end of 2022, which is 7,517 units less than the RPG target of 39,649. It is projected that South Dublin population growth will not meet the RPG targets until 2028. Therefore it is considered unlikely that the housing provision for South Dublin from January 2015 to the end of 2022 of 39,649 will be achieved by 2022. A further deferral of the 2010-2016 completions to 2028 is considered more likely, due to economic, market and demographic factors that are outside the control of the Planning Authority”.

5.2. Guidelines

The aim of the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, 1996” is to offer general guidance on planning issues so that the environmental impact is minimised, and a consistent approach is adopted by the various planning authorities. Circular Letter PL 07/12, issued in October 2012 by the Minister for the Environment, Community and Local Government under section 28 of the Planning and Development Acts 2000-2012, updated certain sections of the Guidelines and states in Section 2.2, inter alia,

“Planning authorities are therefore advised that from the date of this Circular Letter, attaching a condition to a permission for telecommunication masts and antennae which limit their life to a set temporary period should cease. Where a renewal of a previously temporary permission is being considered, the planning authority should determine the application on its merits with no time limit being attached to the permission. Only in exceptional circumstances where particular site or environmental conditions apply, should a permission issue with conditions limiting their life.”

5.3. Natural Heritage Designations

There are no designated sites within the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against condition no.2 only, has been submitted by ESB Telecoms Ltd. Condition no.2 limits the life of the permission to a duration of three years.

The grounds of appeal can be summarised as follows:

- Condition no.2 restricts the permission to three years. A time limit was placed on the earlier two permissions to enable the impact of the development to be reassessed having regard to advances in technology and local circumstances in the intervening period. There has been no advance in technology and circular PL07/12 requests planning authorities to cease attaching duration limitations to the permissions.
- Notes that only in “exceptional circumstances” should a permission issue with conditions limiting their life.
- Reference is made to the South Dublin County Development Plan with respect to the capacity shortfall in the additional housing units. Notes the site is included as a housing capacity site but states there are no detailed

proposals for the subject land and the attached three-year timeframe is unjustified.

- Refers to Section 4.6 of the Plan which state that the CSO Report is projecting a significantly lower population for the county than the RPGs.
- Notes that this site affords multiple operators the ability to deliver broadband and wireless broadband to residents and businesses in the area. Success of site can be measured by the fact that six customers utilise the site.
- This unduly restrictive condition may mean that operators may view the site as a threat to their network.
- Reference is made to another similar case that ESB Telecoms Ltd. also appealed to the Board, Reg. Ref. Cork City 15/36312, ABP Ref. PL28.244811. In this case the Board decided to extend the period from 5 years to 10 years. The location of the 45m high birdcage structure located in an area designated for redevelopment in the Cork Docklands Masterplan did constitute “exceptional circumstances” but the Board considered a ten-year restriction to be more appropriate.
- Reference is made to Dublin City Council five-year permission, Reg. Ref. 2873/13, ABP ref. PL29N. 242413, which was removed by the Board in light of Circular PL07/12.
- Notes that development in this location is unlikely to be imminent given the nature and extent of existing areas designated for significant housing development including the SDZ’s of Adamstown and Clonburris

6.2. Planning Authority Response

The Planning Authority responded to the grounds of the appeal by stating that *“The applicant has not submitted any reason why a time limited condition should not be retained. Omission of Condition 2 as requested by the appellant would result in no level of future control over these residential development lands. Extension of any time period as set out in condition 2 is a matter for An Bord Pleanála.”*

6.3. Observations

None

7.0 Assessment

7.1. The first party has appealed Condition no.2 only. Condition no.2 restricts the life of the permission to a duration of three-years. Having regard to the fact that the Planning Authority have permitted this development for two periods of five years each, in 2006 and 2011, I am satisfied that the consideration of the proposed development 'de novo' by An Bord Pleanála would not be warranted in this case. Accordingly, I consider the Board should use its discretionary powers under Section 139 of the Planning and Development Act 2000 (as amended), and issue the Planning Authority directions to retain, remove or amend the Condition no.2.

7.2. Condition no.2

Condition no. 2 limits the life of the permission to three-years. The appellant appeals this condition on the basis that it is not in accordance with Circular Letter PL 07/12. As noted above, planning permission was granted on two previous occasions for antennae and telecommunications structure on the site in 2006 and again in 2011, both subject to a limited duration of five years. The Circular Letter advises that where a renewal of a previously temporary permission is sought, the Planning Authority shall determine the application on its own merits with no time limit being attached to the permission. However, it is stated that only in exceptional circumstances where a particular site or environmental condition apply should a permission issue with conditions limiting its life.

The matter to be determined is whether or not "exceptional circumstances" apply in this case. The Planning Authority considers that exceptional circumstances do exist in terms of the development potential of the site, within a bank of undeveloped residentially zoned lands. The Planner's Report notes that to allow for

“unencumbered future development, it is considered a 5-year permission should be applied”¹.

The site is identified as a “Capacity Site” in Map 1.3 of the Plan, where the Council identified a shortfall in the housing units required in the county based on RPG figures. The Plan states that the RPG figures for the county indicate a housing capacity requirement of 39,649 units. Current capacity is identified as 34,294 units or a shortfall of 5,355 units on RPG figures. Additional capacity of 5,849 units has been identified in “Capacity Sites”.

The Plan states that there is a variance between the housing units required in the county as stated by the RPGs and the data produced by the CSO and further states that South Dublin population growth is not expected to meet the RPG targets until 2028.

Notwithstanding the different figures with respect to housing capacity need, I am satisfied that there is a case to be made that “exceptional circumstances” could apply in this instance and consider that the application of a time duration is reasonable in this case.

In consideration of what the time duration should be, I note the Plan also supports and acknowledges the importance of ICT infrastructure. The Plan states *“The widespread availability of a high quality Information and Communications Technology (ICT) network within the County will be critical to the development of the County’s economy, and will also support the social development of the County”*. I also accept the appellant’s contention that this particular structure is of importance to the area as evidenced by the fact that six operators avail of its location. Thus, I am satisfied that to protect this important piece of infrastructure, and yet to enable the Council plan for the future development of the area in accordance with the zoning objective, the condition should be amended to read five-years.

7.3. I have reviewed the cases referred to by the appellant.

¹ Condition limited the duration to three years.

- PL28.244811 – This was for retention of ICT infrastructure in Cork City. The case is similar, however, the zoning of the site appears to have changed between Development Plans from *Business and Technology* in 2005 to *Social/Community* in 2009 to *Schools* in the 2015 Plan. A ten-year duration was conditioned in this instance.
- Dublin City Reg. Ref. 2873/13, ABP ref. PL29N. 242413. This permission included a condition limiting the life of the permission to 5 years contrary to Circular Letter 07/12. This condition was removed by the Board.

7.4. Appropriate Assessment

Having regard to the nature and scale of development proposed, namely the retention of fully completed works, and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that the Board directs the Council under Section 139(1) of the Planning and Development Act 2000, as amended, to AMEND Condition no.2.

Reasons and Considerations

Having regard to Development Plan policies and the zoning of the site for residential development, it is considered that an exceptional circumstance has arisen in accordance with Ministerial Circular Letter PL07/12. A temporary permission is therefore warranted in this instance.

Condition no.2

*The site is located within largely undeveloped residentially zoned lands which have been identified as a housing capacity site in Map 1.3 of the County Development Plan 2016 - 2022. A permanent grant of planning permission would not be appropriate on this site prior to the determination of a comprehensive residential development of the lands. This permission is for a period of **5 years** from the date of final grant of planning permission. The telecommunications structure and related ancillary structures shall then be removed unless, prior to that date, planning permission has been granted for retention for a further period by the Planning Authority or by An Bord Pleanála on appeal.*

Reason: *In the interest of ensuring no impediment to comprehensive residential development of appropriately zoned lands and to assist in achieving the core strategy of the County Development Plan 2016 - 2022.*

Ciara Kellett
Senior Planning Inspector

18th October 2016