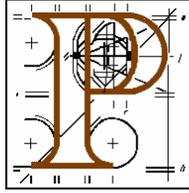


An Bord Pleanála



Inspector's Report

Reference No.:	10.RL2670
Planning Authority:	Kilkenny County Council
Referrers:	Michael and Mairead Cormack
Referral:	Whether the erection of a mast with aerials off same and support structures is or is not development or is or is not exempted development.
Location :	Freshford Garda Station
Site Inspection:	6 th July 2010.
Inspector:	Des Johnson

Introduction

On 11th September 2009, Michael and Mairead Cormack, Kilkenny Road, Freshford, Co. Kilkenny sought a Declaration from Kilkenny County Council under section 5 of the Planning and Development Act, 2000, as amended.

By Order No. 399, dated 7th October 2009, Ref. No. 164, Kilkenny County Council declared that the erection of mast with aerials off same and support structures at Freshford Garda Station is development and is exempted development.

The Planners report states that the applicants for referral reside in the adjoining dwelling house. There was a mast with aerials on the site prior to construction of the new one. The matter the subject of the referral falls within the description of development in Class 31 of Part 1 of Schedule 2 and does not exceed the conditions and limitations set for that class. As such the development is considered to be exempted development.

The matter was referred to the Board by Michael and Mairead Cormack, Kilkenny Road, Freshford, on 14th October 2010.

Site Location & Description

The Garda Station is towards the eastern end of the built up area of Freshford. It is on the southern side of the street (Kilkenny Street) and faces roughly north. It is as illustrated on the attached photographs taken at the time of inspection. The Garda Station appeared to have 'part-time' opening hours and was closed at the time of my visit.

Adjoining to the west is a two storey detached dwelling and to the east there is a single storey exchange building. There is a lengthy garden to the rear of the Garda Station and to the south of this there is a large green area with sports fields. The Nuenna River is on the opposite side of Kilkenny Street and set back a short distance from the street.

The existing aerial is very prominent in local views as illustrated on the attached photographs. There is a slim support structure, circular in circumference, with a series of antennae attached. There are cables attached to the support structure for much of its height, and there is an elaborate arrangement of supporting stays, some of which are anchored on the buildings and others attached to independent anchoring elements. There is a metal cabin at the base of the mast and I did not notice any sound coming from either the cabin or mast at the time of inspection.

Referrers' Case

The side of the referrers' house forms part of the boundary between the two premises. Over two weeks in August 2009 a mast/support pole and support structures with aerials were erected at the rear of Freshford Garda Station. The side of the referrers' house is approximately 10 metres from this mast. The mast replaced a previous one that was removed. The new structure provides communications for Garda,

Ambulance and Fire Brigade whereas the old structure was for Garda only. As such, there is a change of use. The support structures are different.

The new mast is very visible and unattractive. There is noise coming from a box at ground level. This is a residential area and the station is adjacent to the local GAA pitch and a short distance from the Primary School, in contravention of the Guidelines by the DoEHLG to planning authorities. The mast contravenes provisions of the Kilkenny County Development Plan and devalues property in the vicinity.

The Board previously refused permission for a mast at this location and also at the Eircom building adjacent to the residence attached to the Garda Station.

The referrer submits a series of photographs, some of which show the previous mast in comparison to the newly erected mast the subject of the referral.

Garda Siochana Case

The structure was installed by a company called Shared Access acting as consultants to the OPW. The mast is at least unsightly and does little to enhance the image of the Garda Station in the locality.

Previous Relevant Decisions

RL2437

The Board decided that the replacement of an antennae support structure (telecommunications mast) and associated equipment cabins at Bray Garda Station is development and is not exempted development.

Reasons:-

- development does not come within the scope of section 181 of the 2000 Act, as amended, as it does not satisfy the requirements of Article 86 (1)(d) of the Planning and Development Regulations 2001, and is not a development by or on behalf of a State Authority.
- the erection of replacement antennae support structures does not come within the scope of Class 31(j) of the Regulations, as it has not been demonstrated that the replacement structure is located as near as possible to the replaced structure, having regard to construction activity and safety requirements.

RL2352

The Board decided that the erection of a replacement antennae support structure in place of the existing antennae support structure and the installation of permanent telecommunications exchange and radio station containers at Shankill Garda Station is development and is exempted development.

Reasons:-

- the development comes within the scope of Class 31(j) of the 2001 Regulations as the work is being carried out by a statutory undertaker and the conditions and limitations applied to this class will be complied with.

- the installation of permanent telecommunications exchange and radio station containers and cabinets carried out by individual statutory undertakers comes within the scope of Class 31(e) of the 2001 Regulations.

Planning History

PL10.110347 - Permission refused on appeal for the erection of a 30 metre high triangular mast with additional antennae and cabin at Freshford Garda Station.

Reason:- Visual obtrusion and serious injury to the amenities of the area and property in the vicinity.

PL10.228290 - Permission refused for the erection of 15 metre high support pole to carry 3 no. radio aerials for use by Emergency Services (Garda, Ambulance and Fire Brigade) together with associated equipment for a new Digital Radio Service at Eircom Exchange, Freshford.

Reason:- Visually obtrusive and overbearing in the streetscape. Injury to the visual amenities of Freshford.

Freshford Local Area Plan

The site is zoned for residential use. The adjoining area to the south is zoned for open space.

It is Policy to ensure that the necessary telecommunications and electricity supply are available for the existing and future development of Freshford. It is also policy to support the development of Garda services in Freshford in co-operation with the Garda Síochána.

Section 2.3.2 refers to Tourism and states that the River Nuenna is perhaps the most significant natural amenity in the town and future development should preserve the area around the river corridor for passive recreation use. Princes Bridge over the tributary of the Nuenna River is a Protected Structure.

Planning and Development Regulations 2001, as amended

Part 9 relates to *Provisions with Respect to Certain Development by or on Behalf of State Authorities*. Under Article 86(1)(a), in accordance with section 181(1)(a) of the Act, the provisions of the Act shall not apply to classes of development including the following:-

Garda Stations or other buildings, or other premises or installations, or other structures or facilities, used for the purposes of or in connection with the operations of An Garda Síochána.

There are limitations on the above in that any installation cannot extend the premises or other installation beyond the cartilage of the existing premises, and the development must be incidental to the use of the building, premises or installation. Limitations may also apply in circumstances where the building is a protected structure.

Class 31 of Schedule 2, Part 1 refers to the carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of a series of different elements. Of particular significance in this case are the following:-

(f) cabinets forming part of a telecommunications system.

Conditions & Limitations:- The volume above ground-level of any such cabinet shall not exceed 2 cubic metres measured externally.

(j) an antenna support structure in place of an existing antenna support structure.

Conditions & Limitations:-

1. the replaced structure to be removed no later than 4 weeks following its decommissioning
2. the height of the replacement structure shall not exceed the height of the replaced structure.

where the replaced structure was 2 metres or less in width, the width of the replacement structure may not be more than twice the width of the replaced structure, all measurements to be taken at the widest point.

where the replaced structure did not incorporate an antenna platform, the replacement shall not incorporate such a platform.

4. an additional 12 antennae for mobile telephony may be attached to the replacement structure, of which not more than 8 of the additional 12 shall be of the dish type.
5. the dimensions of any additional antenna for mobile telephony shall not exceed the greatest length, width or depth of any antenna for mobile telephony of corresponding type on the replaced structure

in any other case, the dimensions of any antenna provided shall not exceed, in the case of any co-linear type antenna, 5 metres in length x 0.1 metres in diameter.

6. the replacement of an antenna support structure together with any replaced or additional antenna shall not result in the field strength of the non-ionising radiation emissions from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulation.

Assessment

The question referred to the Board is as follows:-

Whether the erection of mast with aerials off same and support structures at Freshford Garda Station is or is not development or is or is not exempted development.

Submissions made to the Board refer to 'noise from the cabin on the ground'. They also indicate that this is a replacement mast erected in 2009 in the same location as the original mast. In these circumstances I consider that the question to be determined should refer to both of these facts as follows:-

Whether the erection of a replacement mast with aerials off same, support structures and associated telecommunications cabinet at Freshford Garda Station is or is not development or is or is not exempted development.

In my view the works described constitute development within the meaning of section 3 of the Planning and Development Act, 2000, as amended.

Article 6 of the Planning and Development Regulations 2001, as amended refers to Exempted Development. It states that development of a class specified in Schedule 2 of the Regulations shall be exempted development for the purposes of the Act, subject to limitations listed in Article 9. Article 9 lists restrictions on exemption.

Section 181 (1)(a) of the Planning & Development Act, 2000, as amended provides for the making of Regulations by the Minister, whereby the provisions of the Act do not apply to specified classes of development by or on behalf of a State Authority. Part 9 of the Regulations refers to *Provisions with respect to Certain Development by or on Behalf of State Authorities* and I consider this to be the appropriate starting point in determining the question before the Board. Article 86(1) states that in accordance with section 181(1)(a) of the Act the provisions of the Act shall not apply to specified classes of development. Under Article 86(1)(a)(i) this includes the provision of Garda Stations or other buildings, or other premises or installations, or other structures or facilities, used for or in connection with the operations of An Garda Síochána.

Based on the information submitted the erection of the replacement mast with aerials, support structures and associated telecommunications cabinet is an installation, structure or facility used for the purposes of or in connection with the operations of An Garda Síochána. It is also used, in part by the Fire Brigade and Ambulance. A question arises as to whether this extended use of the mast brings the development outside the scope of Part 9 and, in particular, Article 86. While the Fire Brigade and Ambulance are not State Authorities and are not specifically referred to in Part 9 of the 2001 Regulations, as amended, their services are frequently provided in connection with the operations of An Garda Síochána. As such, I conclude that this extended use of the mast specifically connected with the emergency services does not bring the overall development outside the scope of part 9 and, in particular, Article

86. The installation would not materially affect the character of a protected structure, and the works are incidental to the use of the Garda Station.

While I agree with the views expressed by both the referrers and An Garda in relation to the unsightly and unattractive nature of the mast, this is not a consideration for the Board in this referral. The Board's remit in this case is to determine if the development referred to is or is not development or is or is not exempted development, having regard to the relevant legislative provisions. On this issue I conclude that the development referred falls within Part 9 and Article 86 of the 2001 Regulations, as amended, and is development and is exempted development.

In the event of the Board not agreeing with this conclusion, it would then be appropriate to refer to Class 31 of Part 1 of Schedule 2 of the 2001 Regulations, as amended. This class refers to the provision of a telecommunications service by an authorised statutory undertaker. In this case the information submitted indicates that the structure was installed by a company called Shared Access, consultants to the OPW. Reference to the ComReg website indicates that neither Shared Access nor the OPW are authorised statutory undertakers. As such, I conclude that the development could not fall within Class 31. Should the Board not accept this conclusion, reference should be made to Class 31(j) and the Conditions and Limitations applying. Based on the information submitted I have no reason to conclude that the replacement structure exceeds the height of the replaced structure or that the width of the replacement structure is excessive. It appears that there are additional antenna attached to the top of the replacement mast, and these have a different configuration to the original. In terms of height and diameter these additional antenna appear to meet the Conditions and Limitations of Class 31(j)(5). While there is no platform provided, a number of antenna appear to be attached to support elements at right angle to the mast. Such an arrangement does not appear to be provided for in the Regulations and, as such, I conclude that the development falls outside class 31. I note the other Conditions and Limitations applying to Class 31 (j) and note that there is no information submitted which would indicate that the field strength of non-ionising radiation emissions exceed the limits specified by the Director of Telecommunications Regulation. I also note that the cabinet would appear to fall within Class 31(f).

Overall Conclusion and Recommendation

I conclude that the matter referred constitutes development and is exempted development for reason that the works fall within Part 9, Article 86 of the Planning & Development Regulations, 2001, as amended.

I recommend an Order as follows:-

WHEREAS a question has arisen as to whether the erection of a replacement mast with aerials off same, support structures and associated telecommunications cabinet at Freshford Garda Station is or is not development or is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Michael and Mairead Cormack, Kilkenny Road, Freshford, Co. Kilkenny on 14th October 2009, following a Declaration by Kilkenny County Council dated 7th October 2009:

AND WHEREAS An Bord Pleanála, in considering this referral had particular regard to-

- (a) sections 2, 3, 4 and 181 (1)(a) of the Planning and Development Act, 2000, as amended,
- (b) Part 9, Article 86 of the Planning and Development Regulations, 2001, as amended
- (c) the nature and extent of the works and the use of the telecommunications equipment:

AND WHEREAS An Bord Pleanála has concluded that the works referred fall within Part 9, Article 86 of the Planning and Development Regulations, 2001, as amended, being a development to be used for the purposes of or in connection with the operation of An Garda Síochána.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, as amended, decides that the erection of a replacement mast with aerials off same, support structures and associated telecommunications cabinet at Freshford Garda Station is development and is exempted development.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Act and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Des Johnson,
Director of Planning
16th July 2010