

Supplementary Report

Introduction

I refer to my report and recommendation dated 16th July 2010.

By Board Direction, dated 6th August 2010, the Board decided to defer consideration of this case and to issue Section 137 notice to the parties and Section 132 notice to the Office of Public Works.

The Section 137 notice indicated that the development may not come within Class 31, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 as the developer does not appear to be a 'statutory undertaker authorised to provide a telecommunications service' as is required under Class 31. It also indicated that it intended to consider if the development might be exempted development under Article 86(1)(a)(i) at Part 9 of the 2001 Regulations and that the mast and equipment might be deemed to be a development for the purposes of or in connection with the operations of the Garda.

The Section 132 notice to the OPW asked for clarification of the purpose of the replacement mast erected in August 2009 at Freshford Garda Station. It requested a description of the function of the associated telecommunications equipment, including the agencies or companies making use of its services.

Responses to these notices were received from the Referrers and the OPW. Following receipt of the OPW submission, this was circulated to the Referrers for comment and a further submission was received from the Referrers.

I summarise the submissions received as follows:-

Michael Cormack and Mairead Cormack (Referrers) date stamped 31.08.10.

The following points are made:-

- The Referrers cannot say if the developer is a statutory undertaker and cannot comment on the field strength of the non-ionising radiation emissions.
- The new structure is higher and wider than the old structure.
- The cabin is not the required distance from the Referrers house.
- The number of antennae exceeds the number on the old mast.

The question is asked – what might the mast be used for in the future?

If the development has been carried out under Article 86(1)(a)(i) of the 2001 Regulations, the authorities did not comply with Article 87. This is because the relevant authorities and Shared Access are relying on Class 31 for exemption.

Reference is made to an internal Garda memo stating that Shared Access are acting as consultants to the OPW. There is agreement to use Garda sites as aerial sites and these are to be used by licensed mobile operators. In return Shared Access are to facilitate the setting up of Tetra equipment on the same masts for use by the Garda. It is obvious that the conditions of the agreement are not being adhered to in this case.

Article 86 would refer to a new structure or where a new Garda Station would be built.

Office of Public Works date stamped 02.09.10 (Hard copy date stamped 06.09.10)

The primary purpose of all telecommunications masts at Gard Stations is the facilitate the services and activities of An Garda Siochána. The Commissioners of Public Works issued a licence to Tetra Ireland Ltd. in respect of a mast at Freshford Garda Station as part of a roll-out of the National Digital Radio Service for emergency services. Under the licence Tetra Ireland Limited are solely responsible for compliance with the planning regulations.

The Freshford Garda Station mast was replaced in August 2009 under Class 31, Part 1 of the Planning and Development Regulations, 2001 on behalf of Tetra Ireland Limited who are authorised under licence by ComReg to provide a telecommunications service.

Four Garda antennae have been relocated from the original mast and are used for Garda VHF communications within the Freshford Sub-District and for communications to and from District HQ. When the Tetra network goes live in the Carlow/Kilkenny Division, the VHF communications will be terminated after a 4 week period and the site will then be used by Tetra Ireland Limited only. The Tetra Ireland equipment consists of 3 omni antennae and a GPS antenna.

There are no commercial 3rd parties licensed to install telecommunications equipment and the Commissioners of Pubic Works do not intend to issue any further licences in respect of this mast.

An electronic communication received by the Board on 03.09.10 states that the licence held by Tetra Ireland Limited from ComReg is in accordance with S.I. 324 of 2008.

Michael Cormack and Mairead Cormack (Referrers) date stamped 30.09.10

There is no problem with An Garda Siochána having their communications at Freshford Garda Station.

No copies of the licences issued to Tetra Ireland have been forwarded.

There were only 3 Garda antennae on the old mast.

The OPW indicated that the development was carried out under Class 31. If this is the case the following conditions have not been met:-

- The new structure is higher and wider
- The cabin is not the required distance from the Referrers house and is only two feet from an existing occupied house. It gives rise to noise and nuisance.

Assessment

I note from the submission of the OPW that reliance is being placed on Class 31 exemption for this development. Based on this OPW submission I am now satisfied that the development was carried out by a statutory undertaker. Based on the information before me the dimensional differences between the original mast and the replacement structure appear to be limited, although the cabling attached to the replacement mast does increase the width of the aerial. For the reasons given in my report dated 16th July 2010, I consider that the development does not fall within Class 31 of Part 1 of Schedule 2 of the 2001 Regulations. I submit that there is nothing in the submissions received consequent to the notices issued under Sections 132 or 137 to alter my original recommendation in this regard.

The Referrers argue that the development could not be exempt under Article 86(1)(a)(i) as the requirements under Article 87 of the 2001 Regulations were not complied with. I submit that this article requires public notice of a proposed development being carried out under Article 86, other than the construction or erection of specified temporary structures, which does not apply in this case. I submit that there is no information before me to indicate that Article 87 was complied with in relation to this development and in the absence of such information I conclude that it was not complied with. Under an Article 87 notice a State Authority shall state that submissions or observations with respect to the proposed development, dealing with proper planning and sustainable development of the area in which the development would be situated, may be made in writing to the State Authority within a period of 6 weeks. Under Article 88 notice a State Authority shall send notice to the planning authority and submissions or observations accepted; this does not appear to have been complied with either, based on the information before me. Under Article 89 a State Authority shall make available for inspection for a period of 4 weeks drawings or particulars of the proposed development. Under Article 90 the State Authority shall, in deciding whether a proposed development is to be carried out, invite submissions or observations and have regard to such submissions or observations. The State Authority shall have to have regard to submissions under Article 90 in deciding

whether or not the proposed development should be carried out and, if it is to be carried out, with or without modifications or variations.

On this issue I consider that it is significant that the developer in this instance is not claiming exemption under Article 86. The OPW submission clearly states that “I understand that the replacement mast was erected under the exempt development provisions, Class 31 Part 1 of the Planning and Development Regulations 2001 on behalf of Tetra Ireland Limited, who are authorised under licence from ComReg to provide a telecommunications service”. Having regard to the developers reliance on Class 31 as clearly indicated in this statement, combined with the lack of evidence to indicate that any of the notification provisions and the consideration of submissions or observations arising from such notification as set out in Articles 87 – 90 (inclusive) which follow on from Article 86 were complied with, and to the submissions of the referrers, I now consider that it would be inappropriate to consider the matter under Article 86. As a result the *Overall Conclusion and Recommendation* contained in my original report is reversed, although my view on the application of Class 31 to the development carried out remains the same.

Overall Conclusion and Recommendation

I conclude that the matter referred constitutes development and is not exempted development for reason that the works do not comply with the Conditions and Limitations applying to Class 31 of Part 1 of Schedule 2 by reason of the number and configuration (including support elements) of the antenna on the replacement mast.

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, and 4 of the Planning and Development Act, 2000, as amended,
- (b) the nature and extent of the works, the configuration of the antenna including support structures and the use of the telecommunications equipment:

AND WHEREAS An Bord Pleanála has concluded that the works referred fall outside of the Conditions and Limitations applying to Class 31 of Part 1 of Schedule 2 by reason of the number and mounting arrangement for the antenna on the replacement mast

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 not 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
20th December 2010