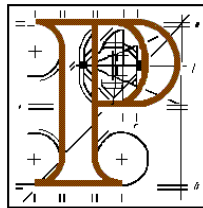


**An Bord Pleanála**



**Inspector's Report**

**Development:** Permission for continued use of the existing 36m high, free standing lattice communication structure carrying antennae and communication dishes within the existing 2.4m high palisade compound previously granted time limited consent LPA Ref: 10/500230

**Site Address:** ESB's Waterford Gracedieu Regional Office, Gracedieu Road, Waterford

**Planning Application**

Planning Authority: Waterford City and County Council

Planning Authority Reg. Ref.: 15/620

Applicant: ESB Telecoms Ltd

Type of Application: Permission

Planning Authority Decision: Grant Permission

**Planning Appeal**

Appellant: ESB Telecoms Ltd

Type of Appeal: First Party V Condition 2

Observers: None

Date of Site Inspection: 1<sup>st</sup> March 2016

**Inspector:** **Joanna Kelly**

**Appendices:** Site Location Map and Photographs and Site key plan

## **1.0 INTRODUCTION**

This appeal is a first party appeal against condition no. 2 of the notification of grant of permission from Waterford City and County Council.

## **2.0 SITE DESCRIPTION**

- 2.1** The appeal site has a stated site area of 0.03 hectares and is located within the grounds of ESB Telecoms' Regional Office located off Gracedieu Road in Waterford City. The site is elevated and commands views to the north across the River Suir. There are existing ESB transmission lines that cross this site which are a dominant feature on the skyline in Waterford city. The existing communication structure is also one of a number of such structures that are visible within Waterford city, although the views of this particular structure are limited to the approach road towards the site from the north and immediate area surrounding the site.
- 2.2** The site is accessible from Gracedieu Road which is predominantly a residential street. The entrance is gated and set-back from the streetscape. The topography of the land at this location falls steeply from east to west.

## **3.0 DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1** The applicant is seeking for the continued use of 36m high free standing lattice communication structure carrying antennae and communication dishes within the existing ESB compound.

## **4.0 TECHNICAL REPORTS**

### **4.1 Planning report:**

The planning report outlines the policies and objectives of the Waterford City and County Council development plan in respect of the proposed development. The proposal was considered satisfactory. No development contributions apply. The planner noted PL07/12 which states that conditions applying bonds or regulating the life of any grant of planning permission should not be applied from the date of issue of the letter (19/10/2012). A grant of permission was recommended.

## 5.0 PLANNING AUTHORITY'S DECISION

The Planning Authority granted permission for the proposed development subject to 4 no. conditions. Of relevance to this appeal is condition no. 2 which is as follows:

*The transmitter power output, antennae type shall be in accordance with the details submitted with this application and shall not be altered without a prior grant of planning permission.*

**Reason:** *To clarify the nature of the development to which this permission relates and to facilitate a full assessment of any future alterations to the network.*

## 6.0 APPEAL GROUNDS

6.1 The First Party grounds of appeal are summarised as follows:-

- The existing development was originally granted permission 5 years ago and forms a vital part of the telecommunications infrastructure of Waterford City.
- The 2010 permission placed a five year time limit on the grant of permission, to allow the council to reassess the development in light of technological advances, in accordance with the 1996 Telecommunication Antennae and Support Structures.
- The site is considered to be a “hub site” due to its strategic location on an elevated site close to the heart of the city and connected to ESB Telecoms’ fibre-optic network. This site is one of ESB Telecom’s busiest point of presence (PoP) sites. A PoP site constitutes a point of connection between customers’ network and ESB Telecoms’ NTFON which allows customers to gather traffic from the wider region via point to point dishes and direct the data onto ESB’s fibre network to the data centres located mainly in Dublin and Cork.
- The significant quantum of equipment currently located on this structure is explained by the regional importance of the site backhauling services in the area to the data centres linked via fibre networks.
- The decision to grant permission is welcomed however condition 2 is unduly restrictive.
- The mobile operators constantly re-organise their networks in light of advances in technology. Dishes are becoming smaller, while antennae are increasing in length to accommodate each generation of new technology.

- The condition would limit the ability of Mobile Network Operators to freely reorganise their networks without first seeking permission.
- The condition would require customers to seek permission in the event of replacement of old technology with new, smaller dishes and antennae.
- The condition is counterproductive as it would work against the aim of condition no. 4 of the same grant which seeks to reduce the proliferation of towers in the vicinity.
- Condition no. 2 would have an undue detrimental impact on ESB Telecoms' ability to broaden customer base at this location as the condition would curtail the planning exemptions set out in Schedule 2, Class 31 (h) of the Planning and Development Regulations.
- It is requested that the Board remove condition 2 as this would be in line with the aims and objectives of all national, regional and local planning policy documents and would be in agreement with the relevant ministerial guidance.

## 7.0 RESPONSES

### 7.1 Planning Authority

The planning authority set out that the condition is a standard wording of a condition utilised to manage antennae and support infrastructure throughout its administrative area. The planning authority would welcome any amendments to the condition which are deemed necessary by An Bord Pleanála which will allow future material development taking place on the site to be fully assessed by the planning authority.

## 8.0 PLANNING HISTORY

**File Ref No. 05/500494** Planning permission granted for erection of a 30 metre high standing lattice communication structure, carrying antennae and communication dishes, with associated ground mounted equipment cabins, to share with other licensed operators within a 2.4m high palisade compound.

**File Ref. No. 10/500230** Planning permission granted to (a) retain the existing 30m high free standing lattice communications structure, carrying antennae and communications dishes within the existing 2.4m high palisade compound previously granted time limited consent ref. No. 05/494 and (b) permission to extend the existing structure by 6 metres and attach 3 X 1.8m antennae, 6 X 1.5m antennae and 6 x 0.6m dishes to the structure extension to allow for future third party co-location.

## **9.0 LOCAL PLANNING POLICY**

### **9.1 Waterford City Development Plan 2013-2019**

The appeal site has a land use zoning objective "Industrial". Telecommunications structures are an acceptable use on such lands.

There does not appear to be any direct policies or objectives to telecommunication structures within the city development plan itself.

I have enclosed a copy of the policy and objectives contained in the Waterford County Development Plan 2011-2017 for reference by the Board.

## **11.0 ASSESSMENT**

Having regard to documentation on file; all of the submissions and local policies for the area, I consider that the appeal can be assessed under the following heading:

- Nature and extent of permission
- Appeal against condition 2
- Appropriate Assessment

### **11.1.0 Nature and extent of permission**

11.1.1 The existing communication structure was granted under File Ref. No. 05/500494 and increased in height from 30 to 36m under File ref No. 10/500230. The applicant is seeking its continued use due to the restriction imposed under condition 2 of that permission which limited the use of the structure to a five year period. The structure is currently authorised as the condition stipulated that permission was for a period of five years from the date of the order which was 6<sup>th</sup> April 2011.

11.1.2 The public notices in this application refer to "the continued use of the existing 36m high, free standing lattice communication structure carrying antennae and communication dishes". There is no mention of the number of dishes or antennae nor is there a schedule of such in the documentation submitted. I note that the public notices pertaining to the previous permission File Ref. 10/230 did not make reference to the actual amount of equipment however there was a schedule of antennae and dishes on the plans submitted. It appears that there is more such equipment on the structure now than what was permitted. By granting the development as described in the public notices without a schedule of equipment it is considered that all existing equipment

would effectively be authorised. Whilst I consider that the structure carries a significant amount of equipment, and is visually prominent on the landscape, the structure is located within an ESB compound adjacent to overhead transmission lines that are equally if not more prominent on the landscape. On balance, I consider that the structure along with the existing equipment is such that accords with the principle of co-location and siting, in line with national policy and as such is considered acceptable at this location. The proposal would generally accord with the proper planning and sustainable development of the area. Notwithstanding the plans submitted and equipment indicated thereon, the Board may wish to condition that a full schedule of all existing antennae and dishes is submitted in the interests of clarity.

### **11.2.0 First Party Appeal against Condition 2**

11.2.1 In this instance the applicant has appealed condition no. 2 of the notification of the grant of permission which seeks to regulate the transmitter output and antennae type, requiring a prior grant of planning permission to alter such on the existing structure. Class 31 of the Second Schedule of the Planning and Development Regulations provides exemptions for various antennae. The regulations provide for limitations on such equipment and as such it is considered reasonable that an operator would be permitted to amend or alter the structures as technology changes without having to seek permission once the limitations of Class 31 are complied with. However, given the limitations provided for under this Class and the extent of equipment on the current structure, the applicant would have to seek planning permission to provide additional dishes. In any event the onus is on the applicant to comply with the limitations provided for within the exemption provisions and as such I consider that the insertion of condition 2 by the Planning Authority does not actually serve any particular purpose in this instance.

11.2.2 The Development Management Guidelines sets out in section 7.3 “basic criteria for conditions” which require a condition to be necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise and reasonable. It would appear that the Planning Authority is attempting to regulate future changes to equipment that may occur to the structure through the inclusion of condition 2. There is no express reason why the applicant should not be permitted to avail of the exemptions should he be in a position to comply with the limitations. Where the limitations of exempted development cannot be met, a planning application would be required for such works. On balance, I consider that condition 2 in this instance does not serve any purpose and is therefore unnecessary and irrelevant.

### **11.3.0 Appropriate Assessment**

11.3.1 Having regard to the source-pathway-receptor model along with the nature of the proposed development on zoned lands on a site serviced by public infrastructure I would not consider that an NIS or Appropriate Assessment is necessary in this case.

## **12.0 CONCLUSION**

The existing telecommunications structure has the benefit of an extant permission. The limitations of the permission under File ref. No. 10/500230, requires the applicant to seek a continued use. The applicant is seeking to remove condition 2 so as to ensure that the applicant can avail of the provisions of Class 31 (h), second Schedule of the Planning and development regulations which I consider reasonable. However given the extent of existing equipment on the structure it is considered that the applicant would not be able to avail of the provisions under this class of development. Therefore, I conclude that whilst condition 2 seeks to regulate any amendment to the antennae type or transmitter output, the limitations of Class 31 would mean that the applicant would most likely have to apply for permission for any amendment in any event. Therefore, condition 2 is considered unnecessary and irrelevant in this regard.

## **13.0 RECOMMENDATION**

It is recommended that permission be granted for the proposed development subject to the following reasons and considerations:

### **REASONS AND CONSIDERATIONS**

Having regard to:

(a) the national strategy regarding the improvement of mobile communications services,

(b) the guidelines for Planning Authorities on “Telecommunications Antennae and Support Structures” issued by the Department of the Environment and Local Government in July, 1996,

(c) Circular Letter PL 07/12 issued by the Minister under Section 28 of the Planning and Development Acts to update certain sections of the “Telecommunications Antennae and Support Structures” Guidelines,

(d) the location of the existing permitted structure within an existing ESB compound on industrial zoned lands,

it is considered that, subject to compliance with the condition set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

**CONDITION**

1. The development shall have been carried out and completed in accordance with the plans and particulars lodged with the application.

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

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**Joanna Kelly**

**Planning Inspector**

**21<sup>st</sup> March 2016**