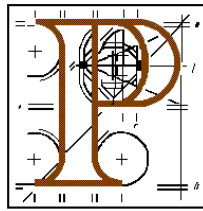


An Bord Pleanála



Inspector's Report

Development: Retention permission to continue the use of the existing 24 metre high free standing monopole type communications structure carrying antennae and communication dishes, enclosed within an existing 2.4 metre high palisade compound previously granted temporary permission 10/1210.

Site Address: Morristownbiller, Newbridge, Kildare

Planning Application

Planning Authority: Kildare County Council
Planning Authority Reg. Ref.: 15/1119
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: 11th May 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 Kildare County Council.

2.0 SITE DESCRIPTION

The appeal site, with a stated site area of 106sq.m., is located in the townland of Morristownbiller approximately 800 metres north of Newbridge Train Station. The site is located immediately adjacent to an ESB sub-station. There is an existing gated road entrance which serves both the site and the ESB sub-station. There is a 2.4m high palisade fence surrounding the site itself. Whilst the communications structure can be seen on approach, the actual site itself benefits from mature trees, in addition to the field boundaries.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The applicant is seeking permission to continue the use of the existing 24 metre high free standing monopole type communications structure carrying antennae and communication dishes, enclosed within an existing 2.4 metre high palisade compound previously granted temporary permission 10/1210.

4.0 TECHNICAL REPORTS

4.1 Planning report:

The planner considered the principle of development acceptable and that the visual impact of the development is minimised by the retention of mature trees bounding the site. It was recommended that permission be granted subject to 6 conditions.

4.2 Water Services

No objections/conditions

4.3 Area Engineer and Transportation Department

No objections subject to conditions

4.4 Chief Fire Officer

No objection

4.5 Environment Section and EHO

No objection

4.6 Irish Water

No objection

5.0 **PLANNING AUTHORITYS DECISION**

The Planning Authority granted permission for the proposed development subject to 6 no. conditions. Of relevance to this appeal is condition no. 2 which is as follows:

No further structures other than those shown on drawings submitted to the Planning Authority on the 11th December 2015 shall be erected or attached to the telecommunications structure without a prior grant of planning permission from the Planning Authority.

Reason: In the interest of visual amenity and the proper planning and sustainable development of the area.

6.0 **APPEAL GROUNDS**

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

- The appeal is against condition no. 2 which is contrary to government policy and hinders co-location on the structure.
- It is submitted that the applicant cannot predict operator requirements as the industry is so fast moving that equipment is constantly changing and removed at quick intervals due to faults or upgrades in operator lines.
- The current drawings indicate exactly what is on the structure today with no new equipment proposed as it is maintained that any new equipment would fall within the planning exemptions.
- As the subject structure is deemed acceptable, the applicant considered that they should be allowed to use the exemptions specified at Class 31 (h).
- The subject structure cannot carry a significant amount of equipment as it is of slim design in comparison to other bulky lattice structures. Telecoms equipment would not be viable below 15 metres so this leave 5 metres area at the top of the structure which is already occupied and could only cater for a few additional pieces.
- It is impractical for operators who will not utilise the structure if they have to wait four months for planning permission and are not guaranteed a positive result. The preferable option will be to arrange a lease of a nearby rooftop and erect equipment in line with the exempted development regulations and

effectively by pass the local authority. The inclusion of condition 2 is unnecessary and unhelpful in the roll-out of upgraded telecom services.

- The inclusion of the condition contrasts greatly with telecommunications guidelines and conditions from other planning authorities which seek to encourage co-location. Reference is made to various planning decisions nationally.
- There are no planning merits to the condition which is restrictive and which delays the roll-out of broadband in the area.
- There are a total of six antennae and three dishes erected on the structure.
- The site within a wider ESB substation is deemed the most appropriate in terms of limiting impact on the landscape and viewpoints. The monopole design ensures that the structure is capable of accommodating sufficient equipment to service the area whilst also protecting the wider area from any inappropriate development of structures for single operator use.
- The submission outlines how the proposal complies with national and local planning policies.
- The appeal submission concludes that the reason for the imposition of the condition is contradictory as it does not facilitate the “proper planning and sustainable development of the area” but rather it inadvertently dissuades operators from locating on the structure due to the risks associated with obtaining planning permission for equipment revisions.
- It is requested that condition 2 be removed.

7.0 RESPONSES

Planning Authority

No further comment in relation to this file.

8.0 PLANNING HISTORY

File Ref No. 05/279/PL.09.213567 Permission granted for erection of a 24 metre high, free standing communications pole, carrying antennae and communication dishes with associated ground mounted equipment cabinets to form part of E.S.Bs communication system and to share with other licensed operators within a 2.4m high palisade compound.

File Ref. No. 10/1210 Permission granted for retention permission of the 24 metre high, free standing communications pole, carrying antennae and

communication dishes previously granted time limited consent by ABP Ref. No. 09.213567 and permission to attach 12 x 1.5 antennae and 8 x .06 dishes to allow for future party co-location.

9.0 LOCAL PLANNING POLICY

9.1 Kildare County Development Plan 2011-2017

Most pertinent policies in relation to telecommunications in respect of this appeal are as follows:

- TP 1 To support national policy for the provision of new and innovative telecommunications infrastructure and to recognize that the development of such infrastructure is a key component of future economic prosperity.
- TP 2 To promote and facilitate the provision of an appropriate telecommunications infrastructure, including broadband connectivity and other technologies within the county.
- TP5 To have regard to the provisions of the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (1996) and to such other publications and material as may be relevant during the period of the plan.

10.0 ASSESSMENT

Having regard to documentation on file; nature of the appeal including the submissions on file and local policies for the area, I consider that the appeal should be dealt with under section 139 of the Planning and Development Act, and as such can be assessed under the following heading:

- Appeal against condition 2

For clarity and completeness I have had due regard to the provisions of the Habitats Directive and conclude that having regard to the source-pathway-receptor model along with the nature of the proposed development (a continued use) I would not consider that an NIS or Appropriate Assessment is necessary in this case.

10.1.0 First Party Appeal against Condition 2

10.1.1 In this instance the applicant has appealed condition no. 2 of the notification of the grant of permission which seeks to control the addition of additional telecommunication structures, requiring a prior grant of planning permission to attach any additional structures 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. 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.

10.1.2 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. I would also tend to agree with the applicant, when one considers the wording of the condition in the context of the nature and location of the development, that the reason given cannot be sustained.

11.0 CONCLUSION

The existing telecommunications structure has the benefit of an extant permission. The limitations of the permission under File ref. No. 10/1210, 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 the second Schedule of the Planning and development regulations which I consider reasonable. Therefore, I conclude that condition 2 is considered unnecessary and irrelevant in this regard.

12.0 RECOMMENDATION

As this appeal was considered under section 139 of the Planning and Development Act, 2000 as amended, it is recommended that the Planning Authority be directed to **REMOVE** condition 2 for the following reasons and considerations:

REASONS AND CONSIDERATIONS

Having regard to the location of the facility, to the exempted development provisions of the Planning and Development Regulations and to Government policy on co-location the Board consider that Condition 2 is not warranted.

Joanna Kelly

Planning Inspector

12th May 2016