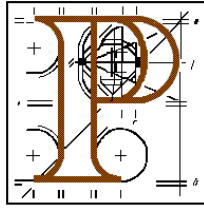


# An Bord Pleanála



## Inspector's Report

**Development:** Continuation of use of communications structure and associated antennae previously granted under Ref 2709/10

**Location:** ESB 38kV Substation, Vernon Ave, Clontarf, Dublin 3

### Planning Application

Planning Authority: Dublin City Council  
Planning Authority Reg. Ref.: 2865/16  
Applicant: ESB Telecoms Ltd.  
Type of Application: Permission  
Planning Authority Decision: Grant Permission

### Planning Appeal

Appellant: Finbarr Kelly & Brenda Kelly  
Type of Appeals: 3<sup>rd</sup> v Grant  
  
Date of Site Inspection: 2<sup>nd</sup> June 2016  
  
Inspector: Dolores McCague

## **1 SITE LOCATION AND DESCRIPTION**

- 1.1 The site is located on land which was previously part of an ESB electricity compound. It is enclosed by a palisade fence and accessed via a laneway from Vernon Avenue, which also serves the adjoining ESB compound.
- 1.2 Fronting onto Vernon Avenue, with the ESB sub-station immediately adjoining to the rear, there is a single storey health clinic.
- 1.3 To the north and west the site adjoins St Annes Park. North of the laneway and separated from it by a hedge and trees, is an area of playing pitches enclosed by a boundary of hedging and trees. To the east there is a large grassed recreational area, with dense planting immediately to the east of the site.
- 1.4 West of Vernon Avenue and south of the site east of Vernon Avenue, there are residential estates. The dwellings closest to the site are those to the south of the clinic, fronting onto Vernon Avenue and those fronting onto a residential road Vernon Heath to the south of St Anne's Park.
- 1.5 Notwithstanding the attempts to disguise the structure as a tree, it has an incongruous appearance, but at this time of year it is well screened by trees and hedges to the north and west and also trees at the corner of the clinic site, at the junction of the laneway and Vernon Avenue.

## **2 PROPOSED DEVELOPMENT**

- 2.1 The application is for continuation of use of communications structure and associated antennae previously granted under PL 21044, PA Ref 2709/10.

### **3 PLANNING AUTHORITY DECISION**

- 3.1 The planning application was lodged 27<sup>th</sup> May 2015.
- 3.2 Technical Reports
- 3.3 Planning report – 21<sup>st</sup> July 2015 – recommending further information.
- 3.4 Further information request - 21<sup>st</sup> July 2015 – on two points – 1) statement of compliance with International Radiation Protection Association Guidelines; 2) clarify what measures have and/or will be taken to control noise emissions.
- 3.5 Further information response submitted – 29<sup>th</sup> January 2016 – statement of compliance with International Radiation Protection Association Guidelines and, following a meeting with a representative of the EHO, a report from an acoustics consultant regarding noise emissions, stating that there is no requirement for mitigation of noise.
- 3.6 The noise report measured sound at No. 1 Vernon Heath and found a tonal noise component; then and carried out further tests at 100Hz and 2000Hz. The tests found minimal energy at 200Hz across the ESB Telecoms site but some energy at 100Hz at the site. Elevated sound energy at 100Hz, it states, appears to emanate from six of the electrical boxes at the site, with the highest sound at 60Hz.
- 3.7 Further tests were carried out to determine if the sound energy levels from equipment at the subject site at 100Hz and 200Hz are high enough to result in the elevated levels of sound energy measured at No. 1 Vernon Heath. Predicted sound levels at No. 1 Vernon Heath (a distance of 35m from the site) were calculated based on the measured levels at the ESB Telecoms site. The predicted noise levels are 27.5dB at 100Hz and 17.1dB at 200Hz compared with the measured levels at this location of 40.9dB and 44.9dB respectively; hence the predicted levels are significantly lower than the measured levels. The report concludes that no noise mitigation is required for the equipment on the ESB Telecoms site.
- 3.8 Further Technical Reports

- 3.9 Engineering Department – Drainage Division – condition.
- 3.10 Environmental Health Officer – 15/6/2015 – conditions.
- 3.11 Planning – recommending permission subject to conditions.
- 3.12 The Planning Authority decided to grant permission subject to 3 conditions (25/2/2016) including:

Condition no. 2

Noise Levels

- a) The LAeq level measured over 15 minutes (daytime) or 5 minutes (nighttime) at a noise sensitive premises when plant is operating at the ESB substation site, Vernon Avenue, Clontarf, Dublin 3 shall not exceed the LA90 (15 minutes day or 5 minutes night), by 5 decibels or more, measured from the same position, under the same conditions and during a comparable period with no plant in operation.
- b) The levels in the 100 Hertz and 200 Hertz third octave bands shall not exceed both neighbouring third octave bands (i.e. 80 Hertz and 160 Hertz and 250 Hertz respectively) by more than 5 decibels when measured as an LLeq (15 minutes day time, 5 minutes night time).

Reason: In order to ensure a satisfactory standard of development, in the interests of residential amenity.

#### **4 PLANNING HISTORY**

2709/10 retain existing 20m high free standing tree type communications structure previously granted; and to attach 6 no. x 0.7m dishes to allow for future third party co-location; granted.

PL 210244, PA Reg. Ref. 4891/04 erection of a 20m high tree type communications structure, by ESB telecoms; granted, 9/5/2005, subject

to conditions, including, condition 1 which limited the permission to 5 years.

PL 104497, PA Reg. Ref. 2196/97 erection of a 21m support structure with GSM, antennas and security fencing by Esat Digifone at ESB substation; refused: zoning.

PL 104093, PA Reg. Ref 0924/97 erection of a 17.7m monopole telecommunications support structure with antennas, containerised equipment shelter and security fencing by Bord Telecom Eireann at ESB substation; refused: zoning.

PL 097986, PA Reg. Ref. 2223/95 erection of a 25m telecoms mast, refused, 1995.

## **5 GROUNDS OF APPEAL**

5.1 A third party appeal against the decision of the planning authority to grant permission has been submitted by Brenda and Finbarr Kelly, 1 Vernon Heath, Clontarf, Dublin 3.

5.2 The grounds of appeal can be summarised as:

- The operations on this site transmit gross noise, EMF and other emissions into third party's home, 24/7/365. Noise prevents relaxation and prevents opening windows. There are health and physical impacts. It prevents use of residential amenities of the house and garden. The location beside a public health clinic and close to a major school and long-term residential nursing home is unsuitable.
- The condition, no. 2 relating to noise emissions is opaque, inoperable and meaningless. There is no public authority to monitor the combined emissions from the compound. The condition leaves it open and subject to contention as to when and by whom the monitoring should be done and what appeals mechanisms are in place. Third party questions how often it will be necessary for ESB Telecoms (ESBT) to take samples inside his home? What independent authority can adjudicate on issues? What complaints procedure is in place? What redress is in place for injuries, damage or loss of amenity to residents?
- No control of the number and variety of dishes and antennae have been put in place.

- Neither the telecommunications nor the substation can be turned off.
- This mast is an addition to an unsatisfactory, overloaded, congested electrical transmission sub-station.
- Emissions from the compound are not in compliance with relevant standards.
- The wider population may benefit at the cost of a few.
- An assessment of the whole compound is necessary.
- No consideration has been given to alternative technologies.
- The DECLG advises that there is no public body to which a citizen can go to have a complaint about EMF emissions and sound emissions investigated. Granting permission in such circumstances is reckless and probably contrary to the constitution. Annotated extracts of the constitution are attached to the grounds of appeal.
- No regulatory system is in place.
- ESBT, ESB Networks and its parent ESB group have no legal or constitutional right to transmit EMFs, NIR emissions, radio emissions or any other waves into third party's home. The granting of planning permission will open up the state to risks of litigation.
- No conditions are set about the number of antennae, volumes and duration of transmission and period of operation. This is only one application by ESB Telecoms; yet ESB Networks is operating in breach of EPA Guidelines on noise, at the site.

## **6 RESPONSES**

### **6.1 Planning Authority**

6.1.1 The planning authority has not responded to the grounds of appeal.

### **6.2 The First Party**

6.2.1 The first party has responded to the grounds of appeal. The response includes:

- 6.2.2 The site measures 17m x 6.7m with a total area of 114m<sup>2</sup>. The site adjoins an ESB 38kV substation but is separate to and independent of ESB Networks site. The site is held under a long leasehold and was formally purchased from ESB in 2008.

The first party makes numerous references to the neighbouring 38kV substation which is not the site in question. Controls relating to an adjoining site cannot be exercised by the first party.

- 6.2.3 Radiation emissions from communication sites must be within the levels laid down in the latest international guidelines.

The equipment and installation at the site is in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-Ionizing Radiation Protection (ICNIRP), as detailed in the EU Council Recommendation of 12<sup>th</sup> July 1999 (Ref 1999/519/EC) on the limitation of exposure of the general public to electromagnetic fields.

Regular testing is carried out and this is known to the third party.

- 6.2.4 Testing for noise was carried out and there is no requirement for mitigation in relation to equipment at the telecoms site. The third party refers to noise at the Networks substation. The subject application is not the appropriate vehicle for pursuing those claims.

- 6.2.5 ESB Networks are not a party to this application. ESB Telecoms Ltd. do not share a compound with ESB Networks.

- 6.2.6 The first party understands that the third party has separately been liaising with ESB Networks and that mitigation works are proposed at the substation site: extension of the height of the transformer boundary wall, provision of acoustic door sets for ingress and egress to the transformer and the provision of acoustically absorptive material to internal facings.

- 6.2.7 The first party's complaints have been taken very seriously by ESB Telecoms Ltd. but his argument lies with a site outside the scope of this application.

- 6.2.8 The subject application is in accordance with the aims and objectives of all national regional and local planning policy documents and is in agreement with ministerial guidance.

## 7 PLANS AND POLICIES

- 7.1 The **Dublin City Development Plan 2011-2017** is the relevant policy document. It includes it is the policy of Dublin City Council to encourage and facilitate telecommunications infrastructure in appropriate locations throughout the city as a means of improving economic competitiveness and contributing to sustainable movement by reducing the need to travel through enabling e-working, e-commerce and distance learning’.

Area is zoned ‘Z1’ ‘to protect, provide and improve residential amenities’; permissible uses include: ‘public service installation’, defined in Appendix 29 – land-use definitions (P406) as including ‘telecommunications.’

- 7.1.1 The most recent policy document is **Circular Letter: PL 07/12**, issued on 19 October 2012, in respect of the Telecommunications Antennae and Support Structures Guidelines by the Minister for the Environment, Community and Local Government, under section 28 of the Planning and Development Acts 2000-2012 to update certain sections of the Telecommunications Antennae and Support Structures Guidelines (1996).

Updates were introduced to support the planning system in facilitating the objectives set out under the National Broadband Plan.

From the date of the Circular Letter, the attachment of a condition to a permission for telecommunication masts and antennae, which limits 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.

Planning authorities should not include such separation distances in Development Plans as they can inadvertently have a major impact on the roll out of a viable and effective telecommunications network.

Planning authorities should not include monitoring arrangements as part of planning permission conditions nor determine planning applications on health grounds. Planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matters in respect of telecommunications infrastructure. These are regulated by other codes



and such matters should not be additionally regulated by the planning process.

#### **7.1.2 Guidelines 1996**

Substations operated by the ESB may be suitable for the location of antennae support structures.

Only as a last resort should free-standing masts be located in a residential area or beside schools. If such a location should become necessary, sites already developed for utilities should be considered and masts and antennae should be designed and adapted for the specific location. The support structure should be kept to the minimum height consistent with effective operation and should be monopole (or poles) rather than a latticed tripod or square structure.

Planning authorities should not include monitoring arrangements as part of planning permission conditions nor determine planning applications on health grounds.

## **8 ASSESSMENT**

8.1 The issues which arise in relation to this appeal are: noise, EMF and other emissions, control of the number and variety of dishes and antennae, and appropriate assessment and the following assessment is addressed under these headings.

### **8.2 Noise**

8.2.1 The grounds of appeal refers to noise and the impact of noise on the residential amenity of the third parties' home. From the report titled 'noise investigation' submitted in response to the further information request, it appears that there is no issue with regard to noise from the subject site, but that there may be an issue with regard to noise from the adjoining ESB Networks site. The third parties in their grounds of appeal, refer to both sites. Only the ESB Telecoms site is the subject of this appeal.

8.2.2 The planning authority decision includes a condition, condition no. 2, which sets maximum noise limits from the subject site. The grounds refers to this condition, stating that it is opaque, inoperable and meaningless; that there is no public authority to monitor the combined emissions from the compound; that the condition leaves it open and subject to contention as to when and by whom the monitoring should be done and what appeals mechanisms are in place. The grounds also

questions how often it will be necessary for ESB Telecoms (ESBT) to take samples inside his home; what independent authority can adjudicate on issues; what complaints procedure is in place; and what redress is in place for injuries, damage or loss of amenity to residents?

- 8.2.3 The first party refers to their understanding that ESB Networks has been liaising with the third party and that mitigation works are proposed at the substation site: extension of the height of the transformer boundary wall, provision of acoustic door sets for ingress and egress to the transformer and the provision of acoustically absorptive material to internal facings.
- 8.2.4 The ESB Networks site adjoins but is independent of the subject site.
- 8.2.5 Notwithstanding that it has been shown that no noise issue arises from the existing development on the subject site, the Board may consider it appropriate to attach a similar condition, to that in the planning authority decision, in order to ensure that if any issue does arise it is amenable to control under planning legislation.
- 8.2.6 Noise should not be a reason to refuse permission.

#### 8.2.7 **EMF and other Emissions**

- 8.2.8 The grounds of appeal refers to EMF and other emissions, and states that emissions from the compound are not in compliance with relevant standards.

- 8.2.9 The 1996 guidelines included:

As part of their planning application operators should be required to furnish a statement of compliance with the International Radiation Protection Association (IRPA) Guidelines (Health Physics, Vol. 54, No. 1 (Jan) 1988) or the equivalent European Pre-standard 50166-2 which has been conditioned by the licensing arrangements with the Department of Transport, Energy and Communications, and to furnish evidence that an installation of the type applied for complies with the above guidelines.

As part of the licensing framework being developed by the Minister for Transport, Energy and Communications in relation to mobile telephony, operators are now being required to comply with the relevant international standards in relation to emissions of non-ionising radiation from telecommunications antennae.

Planning authorities should not include monitoring arrangements as part of planning permission conditions.

- 8.2.10 The circular letter updating the guidelines reiterates that health and safety issues in respect of telecommunications infrastructure are regulated by other codes and such matters should not be regulated by the planning process.
- 8.2.11 As part of the planning application, the first party has shown that the equipment and installation is in full compliance with the requirements of the radio frequency (RF) public exposure guidelines of the International Commission on Non-Ionizing Radiation Protection (ICNIRP), as detailed in the EU Council Recommendation EC/1999/519, on the limitation of exposure of the general public to electromagnetic fields; which is the relevant international standard.
- 8.2.12 In my opinion the emissions from the compound are in compliance with relevant standards; and compliance with standards should not be a reason to refuse permission or the subject of a condition.
- 8.2.13 **Control of the number and variety of dishes and antennae**
- 8.2.14 The grounds of appeal refers to the absence of a condition controlling the number and variety of dishes and antennae which may be erected.
- 8.2.15 The guidelines state that sharing of an antennae support structure will normally reduce the visual impact on the landscape, and that all applicants will be encouraged to share.
- 8.2.16 The circular letter states that health and safety in respect of telecommunications infrastructure is regulated by other codes.
- 8.2.17 I do not consider it appropriate to seek to control the number and variety of dishes and antennae which may be erected on the support structure.

### **8.3 Appropriate Assessment**

- 8.4 The proposed development is the continuation of use of communications structure and associated antennae previously granted under Ref 2709/10. The nearest Natura sites are the North Dublin Bay SAC (000206), and the North Bull Island SPA (004006), separated from the subject site by developed areas of north Dublin City.
- 8.5 In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans

and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision on the proposed development. The process is known as appropriate assessment. In this regard a guidance document 'Appropriate Assessment of Plans and Projects in Ireland' was published by the DoEH&LG on the 10 December 2009.

- 8.6 Having regard to the nature and scale of the proposed development and proximity to the nearest European site, 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.

## **9 RECOMMENDATION**

In accordance with the foregoing assessment, I recommend that planning permission be granted for the following reasons and considerations, and subject to the following conditions.

## **REASONS AND CONSIDERATIONS**

It is considered that subject to the following conditions, the development as proposed, comprising continuation of use of communications structure and associated antennae previously granted under Ref 2709/10, would contribute to the provision of necessary infrastructure, would not impact unduly on the character of the area or conflict with the City Development Plan and would accordingly be in accordance with the proper planning and sustainable development of the area.

### **Conditions:**

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, by the further plans and particulars submitted on the 29 day of January 2016 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning

authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

- 2 Noise Levels - The LAeq level measured over 15 minutes (daytime) or 5 minutes (nighttime) at a noise sensitive premises when plant is operating shall not exceed the LA90 (15 minutes day or 5 minutes night), by 5 decibels or more, measured from the same position, under the same conditions and during a comparable period with no plant in operation.

The levels in the 100 Hertz and 200 Hertz third octave bands shall not exceed both neighbouring third octave bands (i.e. 80 Hertz and 160 Hertz and 250 Hertz respectively) by more than 5 decibels when measured as an LLeq (15 minutes day time, 5 minutes night time).

**Reason:** In order to ensure a satisfactory standard of development, in the interests of residential amenity.

- 3 The disposal of surface water, shall comply with the requirements of the planning authority for such works.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

---

Dolores McCague

Inspectorate

---

Date

Appendix 1 Map and Photographs

Appendix 2 Copy extracts from Dublin City Development Plan 2011-2017

Appendix 3 Copy of Circular P07/12