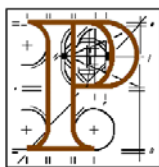


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL09.246458

Development: 33m high free standing lattice communications structure carrying antennae and communication dishes within existing 2.4m fenced compound.
Moneycooly, Maynooth, Co. Kildare.

Planning Application

Planning Authority: Kildare County Council

Planning Authority Reg. Ref.: 16/113

Applicant: ESB Telecoms Ltd.

Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): ESB Telecoms Ltd.

Type of Appeal: First v Conditions

Observers: None on file

Date of Site Inspection: 3rd July 2016

Inspector: Sarah Moran

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The development site is located on the southern outskirts of Maynooth, Co. Kildare, south east of M4 junction 7 and c. 2 km south of Maynooth town centre. The site is a compound owned by ESB Telecoms Ltd., stated area 513 sq.m., enclosed by a 2.4m high palisade fence with vehicular access from the public road. The compound contains an existing communications mast. According to the documentation on file, there are 16 no. antennae and 13 no. dishes attached to the structure, which are used by various service providers, including the emergency services. The compound also has an existing communications cabin along with several smaller cabinets containing associated ground infrastructure. There are mature trees and vegetation on the perimeter of the compound, providing screening from the public road and adjacent areas. Maynooth Business Campus is located to the immediate west and there is a row of individual residential properties to the east. There is an electricity substation to the immediate north of the site and an overhead electricity line traverses the site, running from the substation in a southward direction. The wider area around the site is generally agricultural in nature.

2.0 PROPOSED DEVELOPMENT

- 2.1 Permission is sought to retain and continue the use of the existing 33m high triangular, lattice telecommunications mast. The development does not involve any changes to the existing structure and permission is sought to continue the existing use only.

3.0 PLANNING HISTORY

- 3.1 Permission was originally granted to ESB for a 30m free standing communications mast carrying antennae and communications dishes at the subject site under **00/1977**, on 6th June 2001, to expire 5 years from the grant of permission. ESB was granted retention permission for the existing communication structure under **06/1067** on 25th August 2006, also for 5 years from the date of permission. Permission was granted to Tetra Ireland Communications Ltd. for a 3m tower extension to the existing 30m mast and the attachment of 3 no. 2.8m radio aerials, for use by the emergency services, together with associated cabinet, GPS antenna, cable gantry and associated equipment for a new National Digital Radio Service (NDRS) under **09/215**. ESB was again granted retention permission for the existing 33m high communication structure under **11/336** on 20th September 2011, also for 5 years from the date of permission. Under 11/336, ESB was also granted permission to attach 3 x 1.5m antennae, 3x 1.3m antennae and 4 x 0.6m dishes to the mast to allow for future third party co-location at the compound.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical Reports

- 4.1.1 Kildare County Council Environmental Health Officer 1st March 2016. No objection.
- 4.1.2 Kildare County Council Water Services 2nd March 2016. No objection. Irish Water comment dated 4th March 2016. No objection.
- 4.1.3 Kildare County Council Environment Section 15th March 2016. No objection.
- 4.1.4 Kildare County Council North Area Engineer 15th March 2016. No objection.
- 4.1.5 Kildare County Council Transportation Department 23rd March 2016. No objection subject to conditions.
- 4.1.6 Kildare County Council Fire Service 30th March 2016. No objection.
- 4.1.7 Kildare County Council Planning Department report dated 4th April 2016. Recommends permission subject to conditions.

4.2 Third Party Submissions

- 4.2.1 None on file.

4.3 Planning Authority Decision

- 4.3.1 Kildare County Council issued a notification of a decision to grant permission on 5th April 2016, subject to 8 no. conditions. Condition no. 2 requires that no additional antennae, dishes or other equipment be attached to the structure without a prior grant of planning permission. Condition no. 6 authorises the retention of the development and clarifies that it does not relate to any other development.

5.0 GROUNDS OF FIRST PARTY APPEAL

- 5.1 The first party appeal seeks the removal of conditions nos. 2 and 6. The main points made in the grounds of appeal may be summarised as follows.
 - The existing communication structure has been in place since 2001 and is a successful point of co-location, accommodating the communication equipment of 7 network operators, including broadband providers and Tetra equipment for emergency services. There are currently 16 no. antennae and 11 dishes on the structure. The practice of sharing telecommunications infrastructure has significantly reduced the need for alternative structures in the area.

- The applicant cannot predict operator requirements as the industry is so fast moving that equipment is constantly being changed and removed at such quick intervals due to fault or upgrades in operator lines. The current drawings indicate exactly what is on the structure today with no new equipment proposed. Any new equipment would fall within the planning exemptions.
- Permissions for telecommunications masts are no longer granted on a temporary basis with regard to Circular Letter PL 07/12. Conditions nos. 2 and 6 are unnecessary and unhelpful in the rollout of upgraded telecom services. The applicant wishes to use the exemptions specified in Class 31(h) of the Planning and Development Regulations 2001 (as amended). These exemptions have been created to provide crucial infrastructure without the need to revert to the local PA for each piece of equipment.
- Most telecommunication equipment is swapped out or upgraded on a like-for-like basis to accommodate new technologies. The Regulations specify dimensions and specific criteria, which must be met for equipment to qualify as exempted development. If the criteria are not met, then the development would revert back to the planning process.
- Conditions nos. 2 and 6 would dissuade operators from locating on the structure due to the risks associated with obtaining planning permission for equipment revisions and associated time and costs involved. Operators may then avail of exempted development provisions to provide new infrastructure elsewhere in the vicinity.
- The cabins and cabinets at the site are exempted development under classes 31(e) and 31(f) of the Regulations. Condition no. 6 does not allow for the available planning exemptions to be used if new technologies demand updated equipment, cabin or cabinet formats. Both conditions nos. 2 and 6 affect ground equipment in addition to any equipment attached to the mast. The existing cabinets should be allowed to be upgraded in line with regulations or removed and replaced with new cabinets should more efficient technology be available. The reasons provided are not sufficient justification to deny exempted development rights and will make this established site less attractive for co-location. There are no planning merits to such a restriction and such a condition delays the national rollout of broadband in the area.
- It is both national and local policy to facilitate co-location and the sharing of existing structures but conditions nos. 2 and 6 are at odds with these policies. The development is in accordance with stated policies in the National Spatial Strategy 2002-2020, the Regional Planning Guidelines for the Greater Dublin Area 2010-2022, the DoEHLG Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996), Ministerial Guidance Circular PL07/12 and the Kildare County Development Plan 2011-2017. It is also in accordance with policies stated in the Chief Executive's report and recommendations on the Draft Kildare County Development Plan 2017-2023.

- The appeal cites several recent permissions by various PAs, which included conditions requiring the developer to make the telecommunications structure available to other mobile telecommunications operators, in order to avoid the proliferation of telecommunications support structures and in the interests of visual amenity, ref. Clare County Council P15/751, Louth County Council 15758, South Dublin County Council SD15A/0281 and Galway City Council 15/336. It is submitted that a standard condition encouraging co-location has been consistently included on permissions in order to avoid the proliferation of telecommunications structures.
- The appeal refers to a Board decision ref. PL01.245143, Carlow County Council reg. ref. 15/133 and quotes the Inspector's Report of same.
- Three Ireland have acquired O2 and may seek to consolidate their equipment. This may provide space for additional operators to co-locate and provide additional service in the area. The subject location adjacent to the existing ESB substation is deemed the most appropriate in terms of limiting impact on the landscape and viewpoints. The lattice 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 existing structure at Moneycooly provides a vital service to the area and although it allows for future third party co-location conditions nos. 2 and 6 of the subject permission seek to restrict co-location and the availability of the structure to other operators. The Council are not encouraging co-location as per policy. The planning regulations facilitate and encourage co-location and the sharing of structures and the Council should not hinder this.

6.0 POLICY CONTEXT

6.1 DoELG Telecommunications Antennae and Support Structures Guidelines for Planning Authorities 1996

6.1.1 Section 1.2 of the Guidelines deals with national policy issues and states:

... in order to avoid an unnecessary proliferation of masts, owners (i.e. those controlling access to support structures and masts) would be expected to facilitate co-location of antennae with other operators. Owners and operators will be expected to respond to requests for sharing in a timely, fair and reasonable manner. Accordingly, where the existing site operator/owner considers it is technically possible and where sharing would not preclude the parties from foreseeable future development on the shared facility, planning authorities should encourage co-location of antennae on existing support structures and masts.

6.1.2 Section 4.3 of the Guidelines deals with visual impact. Care is to be taken when dealing with fragile or sensitive landscapes, with other areas designated or scheduled under planning and other legislation, for example, Special Amenity Areas, Special Protection Areas, the proposed Natural Heritage Areas and Special Areas of Conservation and National Parks. Proximity to listed buildings, archaeological sites and other monuments is to be avoided. Section 4.3 states:

In the vicinity of larger towns and in city suburbs operators should endeavour to locate in industrial estates or in industrially zoned land ... It should also be noted that substations operated by the ESB may be suitable for the location of antennae support structures. This possibility should also be investigated.

Section 4.5 states with regard to sharing facilitate and clustering:

Sharing of installations (antennae support structures) will normally reduce the visual impact on the landscape ... All applicants will be encouraged to share and will have to satisfy the authority that they have made a reasonable effort to share ... Where it is not possible to share a support structure the applicant should, where possible, be encouraged to share a site or to site adjacently so that masts and antennae may be clustered. On hill tops clustering may not offer any improvement from the point of view of visual intrusion but in urban or suburban areas use of the same structure or building by competing operators will almost always improve the situation.

6.2 Circular Letter PL 07/12

6.2.1 Circular Letter: PL 07/12 was issued by the Minister on 19th October 2012 under section 28 of the Planning and Development Act 2000 (as amended), to update certain sections of the 1996 Guidelines.

6.2.2 Section 2.2. advises planning authorities to cease attaching conditions limiting the life of permissions for telecommunications infrastructure. It states:

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.

6.3 Kildare County Development Plan 2011-2017

6.3.1 Chapter 8 of the County Development Plan deals with energy and communications. Section 8.9 sets out policy on telecommunications and supporting infrastructure, with regard to the 1996 Ministerial Guidelines. Section 8.12.1 sets out policy on telecommunications infrastructure. The following policies are considered relevant to the subject case:

TL 1: To support national policy for the provision of new and innovative telecommunications infrastructure and to recognise that the development of such infrastructure is a key component of future economic prosperity.

TL 2: To promote and facilitate the provision of an appropriate telecommunications infrastructure, including broadband connectivity and other technologies within the county.

TL 6: To achieve a balance between facilitating the provision of telecommunications infrastructure in the interests of social and economic progress, and sustaining residential amenity and environmental quality.

TL 7: To ensure that the location of telecommunications structures should minimise and / or mitigate any adverse impacts on communities, public rights of way and the built or natural environment.

TL 8: To minimise the number of masts and their visual impact on the environment, by continuing to facilitate appropriate development in a clustered manner, where feasible, respecting the scale, character and sensitivities of the local landscape, whilst recognising the need for economic activity within the county. It will be a requirement for applicants to satisfy the planning authority that a reasonable effort has been made to share installations. In situations where it is not possible to share a support structure, applicants should be encouraged to share a site or to locate adjacently so that masts and antennae may be clustered.

6.3.2 Chapter 14 of the Plan sets out landscape designations for Co. Kildare. The site is located in the Northern Lowlands, an area described as having low sensitivity, robust and tolerant to change, with the ability to accommodate development pressure. Several views in the vicinity of Maynooth are listed for

protection, including views nos. RW2, RW3 and RW4 from bridges within Carton Demesne and views nos. RC4, RC5 and RC6 from bridges on the Royal Canal. Scenic Route no. 30 is also located within Carton Demesne to the north west of Maynooth and Scenic Routes nos. 31 and 32 are located in the vicinity of Castletown House, c. 4.5 km to the south east.

6.3.3 Section 19.9.3 of the plan provides development standards for telecommunications and supporting infrastructure. It states:

The sharing of installations by agencies/operators will be encouraged. Where new facilities are proposed applicants will be required to satisfy the Council that they have made a reasonable effort to share facilities or to locate facilities in clusters;

6.4 Maynooth Local Area Plan 2013-2019

6.4.1 The site is located just outside the development boundary of the Maynooth LAP, which ends at the Maynooth Business Park. The LAP includes a proposed Architectural Conservation Area (ACA) within Maynooth, including much of St Patrick's College, the Main Street / Leinster Street / Moyglare Road junction and the entirety of the Main Street itself. The lands to the immediate west of the site, within Maynooth Business Park, have the zoning objective H2: Office / light industry and warehousing.

8.0 ASSESSMENT

8.1 The following are the issues considered relevant in this case:

- Scope of appeal;
- Legal context regarding exempted development;
- Visual impacts;
- Relevant ABP Cases;
- Conclusion.

8.2 Scope of Appeal

8.2.1 The first party appeal against the PA decision to grant permission relates solely to conditions nos. 2 and 6, which state the following:

2. No additional antennae, dishes or other equipment other than those shown on the drawings received by the Planning Authority on 10/02/16, shall be erected on the site or attached to the free standing lattice communication structure without a prior grant of planning permission.

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

6. This permission authorises the retention of the development in accordance with the plans and particulars received by the Planning Authority on 10/02/16, and does not relate to any other development not the subject of this application, whether or not such development would otherwise constitute exempted development.

Reason: In the interest of clarity and to avoid any misunderstanding as to the details of the permissions.

8.2.2 Section 139 of the Planning and Development Act 2000 (as amended) provides that where an appeal against a condition of permission is brought before the Board and the Board is satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted, then the Board may direct the PA to attach, amend or remove either of the condition or conditions to which the appeal relates or other conditions. The subject appeal relates to the retention of an existing mast at a suitable site, which has repeatedly been granted permission under reg. ref. 00/1977, 06/1067 and 11/336. I am satisfied that there is no need to revisit the PA decision to grant permission and that the Board may consider the subject appeal of conditions nos. 2 and 6 under section 139 of the Act.

8.3 Legal Context – Exempted Development

8.3.1 Class 31 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) outlines exempted development comprising the carrying out by a statutory undertaker authorised to provide a telecommunications service of development including the following;

- (f) cabinets forming part of a telecommunications system;
- (h) the attachment of additional antennae to an existing antenna support structure;
- (i) antennae for high capacity transmission links by way of attachment to existing high capacity antennae support structures;
- (j) an antenna support structure in place of an existing antenna support structure,

All are subject to the limitations specified in Column 2 of Part 1.

8.4 Visual Impacts

8.4.1 The existing communications structure is not located in the immediate vicinity of any views or landscapes designated for special protection. Having inspected the site and viewed it from a variety of locations in the vicinity including Maynooth Business Campus, Taghadoo Cross and the M4, I am satisfied that the addition of additional exempted telecommunications infrastructure at this location would not result in a significant increase in visual impacts.

8.5 Relevant ABP Cases

8.5.1 The following similar cases have been before the Board and are noted.

8.5.2 PL73.241861

Relating to the continuance of use of an existing antennae and communication dishes attached to an existing 38m high lattice communication structure and to attach additional antennae at dishes at ESB Naas Depot, Naas Industrial Estate, Co. Kildare. ESB Telecoms appealed condition no.3, which de-exempted additional telecommunications infrastructure at the site. The Board directed Kildare County Council to remove the condition and the reason therefor.

8.5.3 PL01.245143 Reg. Ref. 15/133

This case is cited in the grounds of appeal. It related to the continued use of an existing 24m high monopole communication structure carrying antennae and communication dishes at ESB's Tullow 38kV Substation, Dublin Road, Carlow. ESB appealed condition no. 2, which required that no antennae other than those detailed in the application shall be placed on the mast without prior approval of the PA. The Board did not consider that particular circumstances arose that would necessitate the limiting of exempted development in this case and directed Carlow County Council to remove the condition and the reason therefor.

8.6 Conclusion

8.6.1 The proposal is for continuance of use of a long established telecommunications support structure and associated equipment. It has already been determined through the planning process that the proposal is a suitable location for such a structure. Having regard to such and national guidance for telecommunications structures that advocates co-location and use of existing structures and to the relevant County Development Plan policies set out above, I consider that it is unreasonable to attach a planning condition that de-exempts exempted development for no apparent reason. The restrictions imposed by conditions nos. 2 and 6 could in fact give rise to a demand for additional structures in the area which would be contrary to the proper planning and sustainable development of the area. These conditions should therefore be omitted.

9.0 RECOMMENDATION

9.1 Having regard to the nature of the conditions the subject of the appeal and based on the reasons and considerations set out below, the Board is satisfied that the determination by the Board of the relevant application as if it had

been made to it in the first instance would not be warranted and directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to REMOVE conditions numbers 2 and 6.

REASONS AND CONSIDERATIONS

Having regard to:

- (a) the guidelines relating to Telecommunications Antennae and Support Structures which were issued by the Department of the Environment and Local Government to planning authorities in July, 1996,
- (b) Circular Letter: PL 07/12 which was issued by the Minister on 19th October 2012.
- (c) the provisions of the Kildare County Development Plan 2011-2017 which encourage co-location of antennae on existing structures, masts and tall buildings, and
- (d) the provisions of the Planning and Development Regulations 2001-2015 in respect of exempted development for telecommunications and in particular the limitations contained therein,

the Board did not consider that particular circumstances arose that would necessitate the limiting of exempted development in this case.

Sarah Moran,
Senior Planning Inspector,
4th July 2016