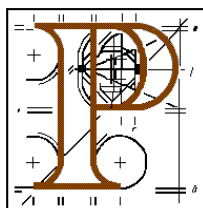


# An Bord Pleanála



## Inspector's Report

**Appeal Reference No:** 09.246459

**Development:** Continued use of existing 45 metre high telecoms communication structure at Oldmilltown, Killeel, Co. Kildare.

### Planning Application

**Planning Authority:** Kildare County Council.

**Planning Authority Reg. Ref:** 16/127

**Applicant:** ESB Telecoms Ltd.

**Planning Authority Decision:** To grant permission subject to conditions.

### Planning Appeal

**Appellant(s):** ESB Telecoms Ltd.

**Type of Appeal:** First party v. condition.

**Observers:** None.

**Date of Site Inspection:** 8 August 2016.

**Inspector:** B. Wyse.

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1** The site, a telecommunications compound, is within an industrial estate located just inside County Kildare on the Kildare-Dublin border and approximately equidistant between Johnstown, County Kildare and Rathcoole, County Dublin. It is a short distance (approx. 1.5kms) south east of the N7.
- 1.2** The site is located in the western corner of a large ESB pole storage yard and adjacent to the ESB Killeel 110kv substation. It has a stated area of 350 sq. metres and is enclosed by 2.4 metre high chainlink fencing. The telecoms mast is a 45 metre high steel monopole structure with a 'bird cage' at the top housing a variety of antennae and dishes. The compound also includes a number of equipment cabins and a 15 metre high wind turbine.
- 1.3** The industrial estate is generally surrounded by agricultural lands within a relatively flat landscape with the foothills of the Wicklow Mountains at some distance to the east. The local area also includes 110kv/220kv powerlines.
- 1.4** Maps and photographs enclosed in file pouch.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1** The proposed development relates solely to the continued use of the telecoms mast.
- 2.2** It is indicated that the mast is currently shared by three mobile communications operators and one broadband provider. There are a total of 9 antennae and 9 dishes on the mast.
- 2.3** The Planning Statement submitted with the application includes the following:
- An express request not to attach conditions seeking limit the amount/type of equipment on the structure. It is stated that there are no planning merits to such restriction and that it would delay the national rollout of broadband in a fast moving industry where equipment is constantly being upgraded/replaced.
  - An outline of the continued need for the structure in the context of operator networks in the area.

- Details of relevant national and local planning policy and guidance in support of the application.
- Details of compliance with international ICNIRP guidelines and COMREG standards on exposure to non-ionising radiation in accordance with licencing relevant conditions.

### **3.0 PLANNING AUTHORITY DECISION**

#### **3.1 Planning Authority Decision**

- 3.1.1** The decision to grant permission is subject to 7 conditions, mostly standard.

Condition 2 states:

*No additional antennae, dishes or other equipment other than those shown on the drawings received by the planning authority shall be erected on the site or attached to the communications structure without the benefit of a separate planning permission.*

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

#### **3.2 Planning Authority Reports**

##### **3.2.1 Planning Report**

This report is the basis for the planning authority decision. It includes:

- Reference to general acceptability of the development.
- Reference to DOECLG Circular Letter PL07/12 advising planning authorities to no longer issue temporary permissions for mobile communications infrastructure.
- Recommendation for condition restricting the addition of antennae in the interest of visual amenity.
- Statement that “there are no protected views etc. in the area”.
- An appropriate assessment screening report indicating no requirement for AA Stage 2 assessment.

### **3.2.2 Other Technical Reports**

Reports of; Area Engineer; Water Services; Environment; Transportation; Fire Officer; Environmental Health; and Heritage officer indicate no objections subject to standard conditions.

### **3.2.3 Observations**

None received.

## **4.0 PLANNING HISTORY**

### **PA Ref. 11/587**

This is the current 2011 planning permission for the development. It is limited to 5 years duration and this is the reason for the subject application.

### **PA Refs. 08/822, 06/1476 and 00/2118**

These are the previous temporary permissions that relate to the site, earliest dating from 2001.

## **5.0 POLICY CONTEXT**

### **5.1 National Policy and Guidance**

#### **5.1.1 Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, DOE 1996**

Note, in particular, guidance on; suitable locations, including industrial estates, ESB substations etc. (Section 4.3); and promotion of clustering/shared services (Section 4.5).

#### **5.1.2 Circular Letter PL07/12 – DOECLG 2012**

Revisions to 1996 guidelines. Note, in particular, advice to planning authorities to cease attaching time limiting conditions to telecommunications masts, except in exceptional circumstances (Section 2.2).

### **5.2 Development Plan**

#### **5.2.2 Kildare County Development Plan 2011-2017**

**Policies TL1 to TL8:** Generally to promote/support the provision of appropriate telecommunications infrastructure subject to the

principles of proper planning and sustainable development, including the promotion of clustering/sharing of facilities.

**Policy TL9:** To minimise masts and antennae within; areas of high amenity/sensitive landscapes; within/adjoining curtilage of protected structures; and on/within the setting of archaeological sites.

In landscape terms the site is located within the identified Eastern Transition Lands between the North Kildare Lowlands and the East Kildare Uplands (Wicklow Mountains Complex). The area is indicated as being of medium sensitivity, capable of accommodating development pressure but with limitations as to scale and magnitude (Section 14.4.1 and Map 14.2).

## **6.0 THE APPEAL**

### **6.1 Grounds of Appeal**

**6.1.1** The appeal is a first party appeal seeking the removal of Condition 2 of the planning authority's decision and which restricts additional antennae, dishes or other equipment at the site without a prior grant of planning permission.

Main grounds include:

- It is impossible to predict operator requirements in a fast moving industry.
- Exempted development provisions were created for the purpose of facilitating infrastructure development without the need to revert to the local planning authority for each piece of equipment.
- The restriction is impractical for operators who are likely to move elsewhere.
- The condition is inconsistent with the widespread practice of encouraging co-location and sharing and which is promoted in both national and local policy.
- The bird cage design ensures that the structure is capable of accommodating sufficient equipment to service the area. The mast is set back within the wider ESB pole yard so that the antennae and dishes are barely visible.

- The development is in accordance with all relevant national, regional and local planning policy and guidance documents.
- Reference ABP Ref 01.245143, PA Ref 15/133 and the inspector's conclusion in relation to a similar proposal and where the planning authority sought to impose the same de-exemption.

## **6.2 Planning Authority Response**

No further comment.

## **6.3 Observations**

None received.

## **7.0 ASSESSMENT**

**7.1** Having regard to the circumstances of this case, as outlined above, and to the nature of the condition under appeal I am satisfied that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted. I consider, therefore, that the appeal should be dealt with in accordance with Section 139, Planning and Development Act 2000 (as amended).

**7.2** As set out at parag. 3.1.1 above the condition under appeal seeks, in effect, to de-exempt any further antennae, dishes or other equipment at the appeal site in the interest, primarily, of protecting the visual amenities of the area.

**7.3** Given the location of the development within an industrial estate and adjacent to other significant infrastructure (electricity substation and powerlines) and within a wider landscape that is rated as medium sensitivity only in the development plan I do not consider that there is any substantive planning basis for the condition. I also accept the applicants case that it would create undue difficulties for operators in a fast moving industry and that it would run counter to the promotion of clustering/sharing that is an important part of national and local policy for the development of infrastructure in the telecoms sector.

**7.4** I also note the provisions of the Planning and Development Regulations 2001, as amended, in relation to exempted for this type of development (Article 6 and Schedule 2, Part 1, Class 31) and

which places limits on the extent of development that can be carried out without the need for planning permission.

- 7.5** A copy of the board Order for ABP Ref. 01.245143, PA Ref. 15/133 as referred to in the grounds of appeal, is included in the file pouch for information. As indicated this is a recent decision on a similar type of case.
- 7.6** Given the nature of the appeal and the condition in question I am satisfied that no appropriate assessment issues arise.

## **8.0 RECOMMENDATION**

I recommend, pursuant to section 139 (1), Planning and Development Act 2000, as amended, that the Board should direct the planning authority to remove Condition 2 in accordance with the following draft order.

**Having regard to the nature of the condition the subject of the appeal, 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, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended, to REMOVE condition number 2 and the reason therefor.**

### **REASONS AND CONSIDERATIONS**

Having regard to;

- (a) the location of the telecoms compound within an industrial estate and adjacent to electricity infrastructure, including a substation and powerlines,
- (b) Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, DOE 1996, and amending Circular Letter PL07/12, DOECLG 2012,
- (c) the provisions of the Kildare County Development Plan 2011-2017 which encourages the development of telecoms infrastructure, including co-location of antennae on existing masts and wherein the

landscape within which the site is located is rated as medium sensitivity,

- (d) the provisions of the Planning and Development Regulations 2001, as amended, in respect of exempted development for telecommunications infrastructure and the limitations contained therein,

the Board does not consider that the said condition is necessary or justified in this case.

### **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts 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.

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**Brendan Wyse**

**Assistant Director of Planning**

9 August 2016