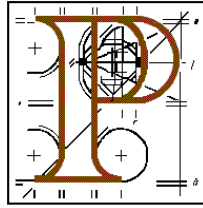


An Bord Pleanála



Inspector's Report

Appeal Ref. No:	PL06F.246597
Proposed Development:	Continued use of the existing 20m high free standing wooden pole communications structure previously granted under F10A/0389
Location:	Mountgorry Substation, Chapel Lane, Swords, Co. Dublin
Applicant:	ESB Telecoms
PA Reg. Ref:	F16A/0090
Planning Authority:	Fingal County Council
P.A. Decision:	Grant
Appeal Type:	First v Condition
Appellants:	ESB Telecoms
Date of Site Inspection:	22 July 2016
Inspector:	Una Crosse

1. SITE AND SURROUNDINGS

The appeal site is located within the existing Mountgorry 38kV substation located in Swords. The site is located down a narrow laneway off Chapel Lane which is accessed from the Malahide Road to the east of Swords Town centre. The appeal site is enclosed by palisade fencing and is well screened. The site is surrounded by a mix of residential and commercial developments.

2. PROPOSED DEVELOPMENT

The development comprises a 20m high free standing wooden pole communication structure which carries antennae and communication dishes with associated ground-mounted equipment cabinets within an existing compound which is bounded by a 2.4m high palisade fence. There are a total of 9 antennae and 4 dishes on the structure. It is stated that the structure has been in situ since 2005 and is a successful point of co-location. It is shared by three communication operators. The cabins and cabinets on site are stated to be exempt under classes 31(e) and 31(f) of the Regulations.

3. PLANNING HISTORY

F10A/0389 - Permission granted for the retention of the structure subject to conditions which included a time limit of 5 years. Condition No. 4 of this decision states:

“The transmitter power output, antennae type and mounting configuration shall be in accordance with the details submitted 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”.

F04A/1837 - PL06F.212483 – Permission was granted for the structure subject to a 5 year time limit.

F02A/1567 - PL06F.202167

At appeal An Bord Pleanála refused permission due to the design and bulk of the proposed telecommunications mast and the proximity to dwelling houses which it was stated by reason of visual intrusion, would seriously injure the amenities and depreciate the value of property in the vicinity.

4. PLANNING POLICY FRAMEWORK

4.1 COUNTY PLANNING POLICY

Fingal County Development Plan 2011-2017

The site is zoned ‘ME’ the objective of which is to ‘*to facilitate opportunities for high density mixed use employment generating activity and commercial development and support the provision of an appropriate quantum of residential development within the Metro Economic Corridor*”.

4.2 DoE Guidelines for Planning Authorities 1996:Telecommunications Antennae and Support Structures

These Guidelines set out the criteria for the assessment of telecommunications structures, which include preferred location, access, co-

location/shared facilities, use of existing forests, design, visual impact, health and safety. The relevant points to this case are summarised below.

- An authority should indicate any locations where telecommunications installations would not be favoured or where special conditions would apply.
- Such locations might include lands whose high amenity value is recognised in the Dev. Plan or sites beside schools which might give rise to local concerns.
- Substations operated by the ESB may be suitable for the location of antennae support structures.
- The sharing of installations and clustering of antennae is encouraged as co-location will reduce the visual impact on the landscape (Para. 4.5)
- All applicants will have to satisfy the local authority that they have made a reasonable effort to share facilities.

5. PLANNING AUTHORITY DECISION

5.1 Decision

The Planning Authority decided to grant permission subject to 5 conditions. Condition No. 2 states:

“The transmitter power output, antennae type and mounting configuration shall be in accordance with the details submitted 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”.

Condition No. 5 requires the applicant to make the mast available to third party operators.

5.2 Planners Report

The planners report notes that the site is well screened. Reference is made to Circular Letter PL07/12 from the Department stating that the attachment of conditions limiting the life of a permission should cease. Reference is also made to the visibility or otherwise of the structure within the adjoining areas particularly in Seamount View. Permission is recommended.

5.3 Internal Submissions

Parks and Green Infrastructure – No objection

Environmental Health – no objections subject to conditions

Water Services – no objection

Transportation Section – no objection

5.4 External Submissions

Irish Water – no objection

5.5 Third Party Submissions

No submissions

6. APPLICANT’S GROUNDS OF APPEAL

The grounds of appeal may be summarised as follows;

- Condition seeks to limit the orientation, amount and type of equipment on the structure with no planning merits for same which would delay national roll out of broadband;
- Structural capacity of the wooden pole is limited with most of desirable heights already utilised with limited scope for additional equipment;
- Changing technology provides applicant cannot envisage style and size of future equipment;
- Request that any additional equipment should fall within exemptions at Class 31;
- Continued requirement for this strategic piece of infrastructure;
- As the structure is deemed acceptable it is applicant's contention that they should be allowed to use Class 31(h);
- Condition 2 hinders implementation of condition No. 5 which permitted co-location and sharing;
- Condition 2 at odds with national policy of colocation and sharing;
- Pole accommodates both Three Ireland and O2 equipment with Three having acquired O2 and therefore may seek to consolidate equipment freeing up space;
- Wording of the condition implies permission also required to reduce equipment which is impractical;
- Council are not an appropriate body to assess network alterations;
- Proposal accords with National, Regional and Local policy for the development of good telecommunications linkages and upgrading of same;
- Precedent case in County Carlow (PL01.245143) where it was considered unreasonable to attach a condition which de-exempts exempted development for no apparent reason;
- Justification for restricting equipment is insufficient and contrary to ministerial guidance;

7. RESPONSES

7.1 PLANNING AUTHORITY RESPONSE

The planning authority commented on the appeal as follows;

- Planning Authority consider that it is reasonable to include the condition in order to ensure that there is no material change to the development permitted e.g. amendment to/addition of antennae so as to significantly alter the visual appearance of the mast.
- Relevant given the structure is visible from nearby residential areas;
- Pertinent given direction under Circular Letter 07/12 that the granting of temporary permissions should cease;
- Inclusion of Condition No. 5 is reasonable and appropriate having regard to council policy on co-location.

8. ASSESSMENT

This assessment will consider the following;

- Principle of Proposal
- Condition No. 2
- Appropriate Assessment

8.1 Principle of the Proposal

This appeal relates to Condition No. 2 and I do not consider it is necessary to address the principle of the proposal given the history of the site and the site context within which this piece of infrastructure is located.

8.2 Condition No. 2

The appellant contends that the inclusion of Condition No. 2 is unnecessary and should be removed. They refer to Class 31 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 which states that the following constitutes exempted development in relation to the carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of: (h) the attachment of additional antennae to an existing antennae support structure subject to a series of limitations which include the number and size of such installations.

I would also refer the Board to Paragraph 4.5 of the 1996 Telecommunications Guidelines which encourages co-location and the sharing of installations and clustering of antennae as it will reduce the visual impact on the landscape and applicants have to satisfy the local authority that they have made a reasonable effort to share facilities. Therefore there would appear to be policy support for the co-location of installations and also an exemption which provides a certain amount of flexibility in respect of the use of the structures by way of the exemption. Over and above the provisions facilitated by the exemption permission must be sought. The PA's response seeks to retain a certain amount of control over the use of the structure for the purposes of protecting visual amenity which they feel is pertinent given the permission is no longer for a temporary period of time.

I would note that the structure is a long established telecommunications support structure with associated equipment which has been determined through the planning process to be in a suitable location for such a structure. In addition, the structure given its construction has limited capacity for additional installations. I would however note that the previous permission for the structure granted permission under **F10A/0389** for the retention of the structure subject to conditions for of 5 years included Condition No. 4 which stated: *"The transmitter power output, antennae type and mounting configuration shall be in accordance with the details submitted 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"*.

It is not clear or explained by the appellant why this condition was not appealed following the decision of the PA at that time and I would suggest to the Board that it is arguable that this condition existing within the most recent permission establishes a precedent for its inclusion. I would however refer to the decision made by Carlow County Council in respect of PL01.245143 where the Board removed a similar condition which sought to restrict the addition of installations and antennae on the mast in Carlow over and above those in existence. In their Order the Board stated that they did not consider

that particular circumstances arose that would necessitate the limiting of exempted development in this case.

While I would question why the same condition in the previous decision on this site was not appealed I do not consider that there is sufficient evidence to suggest that it is an appropriate condition to include in the present circumstances. It would appear that the exempted development provisions facilitate an appropriate use of such structures and the replacement of same particularly given the technological advances in this sector. Furthermore, the residential development located close to the site is not so proximate, in my opinion, such that there is or would be a negative visual impact or an impact on their visual amenity. Therefore, given the national guidance for telecommunications structures which advocates co-location and use of existing structures I consider that it is unreasonable to attach a planning condition that de-exempts, exempted development for no specific reason which would not be satisfied by the limitations included in the exemption. Therefore I would suggest that Condition No. 2 should be omitted.

8.3 Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment and proximity to the nearest European sites, I am satisfied that 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. CONCLUSION

I consider that no reasonable evidence has been provided to support the retention of this condition particularly given the limitations attached to the relevant exemption and the distance of the nearby residential dwellings from the structure.

10. RECOMMENDATION

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 Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to REMOVE condition no. 2.

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) the provisions of the Fingal County Development Plan 2011-2017 which encourages co-location of antennae on existing structures, masts and tall buildings, and

- (c) the provisions of the Planning and Development Regulations 2001-2015 in respect of exempted development for telecommunications and in particular the limitations contained therein,

It is considered that there are no particular circumstances arising that would necessitate the limiting of exempted development in this case.

Una Crosse
Senior Planning Inspector
July 2016.