



An
Bord
Pleanála

Inspector's Report PL15.246812

Development	Retention of existing 30 metre high telecommunications support structure carrying antennae and dishes
Location	Newtownstalaban 38kV Substation, Newtown Road, Drogheda, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	16/236
Applicant(s)	ESB Telecoms Ltd.
Type of Appeal	First Party
Planning Authority Decision	GRANT
Appellant(s)	ESB Telecoms Ltd.
Observer(s)	None
Date of Site Inspection	14 th September 2016
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site comprises a telecommunications compound, with a stated site area of 0.011 ha on the eastern side of the Newtown Road (L2307) in the townland of Newtownstalaban, on the eastern outskirts of Drogheda. The telecommunications support structure is a 30 metre high steel lattice structure supporting a variety of antennae and dishes. The compound also includes a number of equipment cabins and is surrounded by a 2.4m high palisade fence.
- 1.2. The appeal site is adjacent to the Newtownstalaban 38kV substation and a shipping yard with associated warehousing. Boyne Business Park is located c. 120m to the south west of the site and the large Premier Periclase industrial site is c. 350m to the south. The remainder of the surrounding area is primarily in agricultural use, with the exception of the Newtown Blues GAA pitches c. 240m to the west. The River Boyne is c. 650m to the south of the appeal site, while the closest residential dwelling is c. 175m to the north east.

2.0 Proposed Development

- 2.1. The proposed development consists of retention of the existing 30m high telecommunications support structure carrying antennae and dishes which was previously granted under Reg. Ref. 08/124 and ABP Ref PL54.232513.
- 2.2. It is stated that the structure is part of the ESB's communications system and that it is also shared with other licensed mobile network operators.
- 2.3. The cabins and cabinets on the site are stated to be exempt under classes 31(e) and (f) of the Regulations.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission and Condition 2 which forms the subject of this appeal states:

“No additional antennae shall be placed on the existing structure or within the curtilage of the structure without the prior consent of the Planning Authority by way of a planning application.

Reason: *to prevent unauthorised development.”*

3.2. Planning Authority Reports

- 3.2.1. The Planning Officer was satisfied that the development was acceptable, given that:

- Location is well screened from the public road and at some distance from residential development.
- Repeat application for previously granted development.
- Complies with Strategic Objective 9 and Policy TE 1 of Development Plan.
- Site is not within known flood risk area.
- Development will not have a significant effect on any Natura 2000 sites.
- Previous Development Contribution was paid, so no further contributions to be levied, as per Circular PL07/12.

3.3. Other Technical Reports

- None.

3.4. **Third Party Observations**

3.4.1. None received.

4.0 **Planning History**

4.1. The following planning applications relate to the appeal site:

- **02/158; ABP Ref. PL54.202378:** Permission granted in 2003 for a 5 year duration for erection of telecommunications support structure and cabinets. Condition 5 stated that the antennae type and mounting configuration shall not be altered without a prior grant of planning permission.
- **08/124; ABP Ref. PL54.232513 (Contribution appeal):** Permission granted in 2009 for a 5 year duration for retention of telecommunications support structure, cabinets and fencing, and addition of antennae and dishes. Condition 4 was the same as the condition under appeal.

4.2. The following planning applications relate to the adjacent ESB substation:

- **11/59:** Permission granted in 2011 for construction of GIS building, fencing and associated works.
- **15/613:** Permission granted in 2016 for relocation of GIS control building, fencing and associated works.

5.0 **Policy Context**

5.1. **Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, 1996**

5.1.1. These Guidelines set out the criteria for the assessment of telecommunications structures. 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 high amenity lands or sites beside schools (Section 3.2).
- In the vicinity of larger towns, operators should endeavour to locate in industrial estates or industrially zoned lands. Substations operated by the ESB may be suitable for the location of antennae support structures (Section 4.3).
- The sharing of installations and clustering of antennae is encouraged as co-location will reduce the visual impact on the landscape (Section 4.5).

5.2. Circular Letter PL07/12

- 5.2.1. This Circular Letter revises elements of the 1996 Guidelines. In particular, Section 2.2 advises Planning Authorities to cease attaching time limiting conditions to telecommunications masts, except in exceptional circumstances.

5.3. Drogheda Borough Council Development Plan 2011-2017

- 5.3.1. The site is zoned EGZ to provide for the development of business and employment generating business activity, which is primarily manufacturing, service oriented and whose retail output is ancillary to the primary use. Telecommunications structures are a permitted use under this zoning objective.
- 5.3.2. Section 9.2 of the Development Plan notes the vital role of telecommunications in enabling Drogheda to reach its full economic potential, while section 9.2.9 sets out development management assessment criteria for telecommunication structures. This includes a requirement to make antenna support structures available to other service providers at an economic cost.

5.3.3. The following Policies are relevant:

- **TE 1:** Secure the expansion of telecommunications infrastructure.
- **TE 5:** Promote a competitive and comprehensive mobile telephony network. Require operators to share antennae support structures and sites.

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 which restricts additional antennae at the site without a prior grant of planning permission.

The issues raised in the appeal can be summarised as follows:

- Telecoms industry is a fast paced highly competitive environment.
- Appeal site is integral to network in Drogheda area and is utilised by all mobile network operators.
- Height and long-standing nature of support structure has reduced requirement for other towers in the area due to capacity for co-location.
- Exempted development provisions were created for the purpose of facilitating infrastructure development without constant recourse to the planning authority for each piece of equipment.
- The restriction would sterilise the site for future co-location and delay/jeopardise investment due to uncertainty and time delays created.
- The condition is inconsistent with the widespread practice of encouraging co-location and sharing and which is promoted in both national and local policy.

- Class 31(h) exemption acts as a reasonable break on overdevelopment of telecoms sites.
- Telecommunications Guidelines for Planning Authorities promote co-location of network operators. Condition 2 is not in keeping with Government policy and guidelines.

6.2. **Planning Authority Response**

No further comment.

6.3. **Observations**

None received.

7.0 **Assessment**

7.1. **Nature of Appeal**

- 7.1.1. Having regard to the circumstances of this case, including the zoning objective for the site, planning history, site context 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 of the Planning and Development Act 2000 (as amended).

7.2. **Condition 2**

- 7.2.1. Condition 2 seeks to prevent the erection of any further antennae at the appeal site for the stated reason of preventing unauthorised development. The Planning Officer's report does not contain any explanation or rationale for the inclusion of this Condition, although I note that the two previous 5 year permissions for the structure included similar Conditions.

- 7.2.2. The appellant has not explained why the same condition was not appealed following the previous decision of the Planning Authority under Reg. Ref. 08/124. The first party appeal in that instance (PL54.232513) related only to financial contributions. It is arguable that the existence of this condition within the most recent permission establishes a precedent for its inclusion, however I would refer the Board to the decisions made in cases PL01.245143 and PL06F.246597, where the Board removed similar conditions which sought to restrict the addition of antennae on telecoms masts in Carlow and Swords, respectively, over and above those already in existence. In their Orders, the Board stated that they did not consider that particular circumstances arose that would necessitate the limiting of exempted development in those cases.
- 7.2.3. The stated reason for Condition 2 is to prevent unauthorised development. However, Class 31(h) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, explicitly allows for additional antennae and dishes to be added as exempted development, subject to conditions and limitations relating to size and number of such items. In the absence of Condition 2 the appellant could add or replace antennae/dishes and, subject to compliance with the relevant conditions and limitations, such development would not comprise unauthorised development. Any further development over and above the provisions of the exemption would require planning permission.
- 7.2.4. I consider that the Class 31(h) exemption is appropriate given the pace of technological advances in the telecommunications sector and the need to replace or supplement equipment on a regular basis to maintain good and uninterrupted telecommunications services. In this regard I note that the structure is utilised by a number of mobile network operators in addition to the ESB.
- 7.2.5. The proposal is for the retention of a long established telecommunications support structure. It has been established through the planning process that the appeal site

is a suitable location for such a structure. Having regard to this and national and local policy for telecommunications structures that encourages co-location and shared use of existing structures I consider that it is unreasonable to attach a planning condition that de-exempts exempted development for no clear reason.

7.2.6. The telecommunications support structure is located in a suitably zoned area and is surrounded by industrial development and electrical infrastructure. There are no existing residential dwellings in close proximity to the site, the site is not part of a sensitive landscape and there are no protected views or prospects in the vicinity. I do not consider that the addition of antennae/dishes, subject to compliance with the relevant conditions and limitations, would result in a significant additional visual impact or be injurious to visual amenity of the area. Furthermore, I consider that the restrictions imposed by Condition 2 could give rise to a demand for additional telecommunications support structures in the area which would have the potential for impacts on visual and residential amenity.

7.2.7. In conclusion, I consider that there is no clear basis for imposing Condition 2 and no rationale has been provided by the Planning Authority to support the inclusion of the Condition. Given the clear conditions and limitations attached to the relevant exemption, the site's context and zoning, and local and national policy guidance which seeks to promote co-location and maximise the use of existing structures, I therefore recommend that the Planning Authority be directed to remove Condition 2.

7.3. **Appropriate Assessment**

7.3.1. Having regard to the nature and scale of the proposed development, which relates to the retention of a long-established structure previously permitted on a temporary basis, the nature of the receiving environment and the 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.

8.0 Recommendation

8.1. 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 Planning Authority under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended, to REMOVE Condition 2.

9.0 REASONS AND CONSIDERATIONS

9.1. Having regard to:

- (a) The location of the telecommunications support structure adjacent to a 38kV electrical substation and powerlines, in an area characterised by a significant amount of industrial development;
- (b) the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities 1996 and the amending Circular Letter PL07/12;
- (c) the provisions of the Drogheda Borough Council Development Plan 2011-2017 which encourages sharing of existing antennae support structures; and
- (d) the provisions of the Planning and Development Regulations 2001, as amended, in respect of exempted development for telecommunications infrastructure and the conditions and limitations contained therein,

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

Niall Haverty

Planning Inspector

28 September 2016