



An
Bord
Pleanála

Inspector's Report PL92.247042.

Development	Continued use of 21m high free standing lattice communications structure previously granted under Reg. Ref. 11510176
Location	Tountinna Mountain, Arra Mountains, Coolbawn, Co. Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	16600486.
Applicant	ESB Telecoms Limited.
Type of Application	Permission.
Planning Authority Decision	Grant permission subject to conditions.
Type of Appeal	First Party vs. condition.
Appellant	ESB Telecoms Limited.
Observer	None.
Date of Site Inspection	9 th November 2016.
Inspector	Ciara Kellett.

1.0 Site Location and Description

- 1.1. The appeal site is located on an elevated position in the Arra Mountains on Tountinna Mountain, approximately 2.7km due east of the River Shannon and approximately 5km north-east of Ballina, Co. Tipperary. The overall site area is stated as being 263sq.m completely surrounded by a 2.4m high palisade fence. The compound is accessed from an access track off a local road linking Ballina and Newtown.
- 1.2. Within the compound, there is an existing radio building which was erected in the early 1970's, as well as cabins and cabinets and associated communication equipment. The communications structure, the subject of this appeal, was first erected in 1996. The structure is a latticed type structure, 21m in height, and is used by nine different operators. There are four large drum dishes ranging between 2.4m and 3m in diameter, one 1.2m wide dish and 20 smaller dishes less than 0.6m in diameter. There are also a range of antenna associated with emergency services and mobile operators.
- 1.3. Appendix A includes Site Location Maps, Aerial views and photos.

2.0 Proposed Development

- 2.1. Permission is sought to continue the use of the 21m high structure. The most recent grant of permission was for a 5 year period and this permission requests continued use. There are no physical changes proposed.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to three conditions. Condition 3 which is the subject of the appeal states:

The antenna support structure shall be used to facilitate the co-location and erection of suitable antenna facilities for other telecommunications operators. No additional communications antennae, drum shaped dishes or other

telecommunications equipment shall be fitted without a prior grant of planning permission.

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

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- The retention of the mast, which has been at the site for approximately 10 years, is in line with planning policy.
- No EIA is required and a screening has been carried out for AA and concluded that AA is not required.
- Notes that Development Contributions have been paid previously.

3.2.2. Other Technical Reports

- District Engineer – no objections
- Environmental Engineer – no observations

3.3. Prescribed Bodies

- Irish Aviation Authority – no observations
- Eircom Radio Division – no observations

3.4. Third Party Observations

None

4.0 Planning History

- May 1996 – Reg. Ref. PLC/17484 (ABP ref: PL22.097980) permission granted for a radio mast at the existing radio station at Tountinna Mountain for a period of 10 years.

- August 2006 – Reg. Ref. 06510602 granted permission to retain the existing 21m mast for a period of five years and payment of a financial contribution which was fully paid.
- October 2008 – Reg. Ref. 08510350 granted permission to Tetra Ireland Comms. Ltd. for the attachment of 3 no. aerials (3.9m) and 1 no. radio link dish (0.6m) to the subject lattice structure.
- August 2011 – Reg. Ref. 11510176 granted permission to retain the existing mast and sought permission to attach 6 no. 1.7m antennae, 7 no. 0.6m dishes and 2 no. 1.5m dishes to allow for future third party co-location. Condition 5 restricted the life of the permission to 5 years and applied a financial contribution of €62,250.06. No works carried out to date.

5.0 Policy Context

The proposal is subject to the policies and objectives of the North Tipperary County Development Plan 2010 (as varied).

5.1. Development Plan

Section 9.9 of the Plan refers to Communications. **Policy TI14** states:

It is the policy of the Council to facilitate proposals for masts, antennae and ancillary equipment in accordance with Telecommunications Antennae and Support Structure: Guidelines for Planning Authorities, DEHLG, 1996.

Development proposals will be facilitated, where it can be established that there will be no significant adverse impact on the surrounding areas and the receiving environment, particularly in the following locations:

(i) Primary and secondary amenity areas or locations that would be detrimental to designated listed views.

(ii) Within significant views or setting of national monuments or protected structures.

Section 9.10 of the Plan outlines specific objectives which includes objective **SO09-6**:

It is an objective of the Council to work with and support key stakeholders to secure the implementation of the National Broadband Plan and seek to ensure that fast and effective broadband facilities are available in all parts of the county.

The Tipperary Landscape Character Assessment 2016 has recently been published and considers that the 'Arra Mountains – Lower Lough Derg' Landscape type is a Lakeland Enclosure that is a mixture of upland, lowland and lake areas.

5.2. Guidelines

The aim of the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, 1996” is to offer general guidance on planning issues so that the environmental impact is minimised, and a consistent approach is adopted by the various planning authorities. Section 4.5 of the Guidelines refers to *Sharing Facilities and Clustering* and states that “All applicants will be encouraged to share and will have to satisfy the authority that they have made a reasonable effort to share”.

5.3. Natural Heritage Designations

The site is located approximately 2.7km from the Lough Derg (Shannon) SPA (Site Code 004058) and approximately 9km north-west of the Slievefelim to Silvermines Mountains SPA (Site Code 004165).

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against condition no.3 of the planning permission has been submitted by the applicant.

- The applicant states that the condition is contradictory in that it seeks to encourage co-location but then continues on to state that no additional equipment shall be fitted without a prior grant of permission.
- Considers that as the structure is deemed acceptable, the applicant should be allowed to use the exemptions provided by Class 31(h).

- States that the structure is an older type and cannot carry a significant amount of extra equipment so the structure could only cater for a few additional pieces.
- This condition is impractical for smaller broadband providers, who will not use this structure if they have to wait for planning permission.
- The applicant cannot predict operator requirements because the industry is fast moving. The current drawings indicate exactly what is on the structure today with no new equipment proposed as it is maintained that any new equipment would fall within the planning exemption classes.
- This condition contrasts greatly with the telecommunications guidelines which seeks to encourage co-location. Three examples are provided where the County Councils specifically included conditions to allow other operators to co-locate, to avoid a proliferation of telecommunication structures in the area in the interest of visual amenities.
- The Council is not encouraging co-location as per their policy. The planning exemptions facilitate and encourage co-location and the sharing of structures, and the Council should not hinder this.
- Two recent ABP decisions are referred to – ABP ref. PL01.245143 and ABP ref. PL09.246458. Both of these cases refer to similar appeals against conditions relating to exempt development.

6.2. **Planning Authority Response**

The Planning Authority noted that they had no further observations.

7.0 **Assessment**

7.1. **Appeal against condition**

The first party appeal against the Planning Authority decision to grant permission relates solely to condition no. 3.

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 Planning Authority 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. PLC/17484 (ABP ref: PL22.097980) in 1996, Reg. Ref. 06510602 in 2006 and Reg. Ref. 11510176 in 2011. I am satisfied that there is no need to revisit the Planning Authority decision to grant permission and that the Board may consider the subject appeal of condition no. 3 under section 139 of the Act.

7.2. Exemptions

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 conditions and limitations specified in Column 2 of Part 1 of Schedule 2 of the Planning and Development Regulations, as amended.

The applicant has stated that the lattice structure is of an older type and is almost at capacity. It is also stated that the most desirable heights are already occupied so the structure could only cater for a few additional pieces of equipment. I draw the Board's attention to section 1.2 above, where it is stated that there are already currently four large drum dishes ranging between 2.4m and 3m in diameter, one 1.2m wide dish and 20 smaller dishes less than 0.6m in diameter.

The applicant states that the current drawings indicate exactly what is on the structure today with no new equipment proposed as it is maintained that any new equipment would fall within the planning exemption classes. Notwithstanding the

current number of antennae and dishes, I am satisfied that the applicant should be permitted to avail of exemptions provided in Class 31. The conditions and limitations of the exemptions as provided for in Column 2, Part 1 of Schedule 2 of the Planning and Development Regulations are clear and unambiguous and will determine whether or not the applicant requires planning permission.

7.3. Visual Impact

The site is located in the Primary Amenity Area of Tipperary with a viewing point providing views of Lough Derg. Having inspected the site, I am satisfied that any equipment installed in compliance with the exempted development regulations at this location would not result in a significant increase in visual impacts.

7.4. Relevant ABP Cases

The applicant has referred to two other cases recently decided by the Board. I have reviewed both cases and note that both appeals were taken to request removal of similar conditions limiting exemptions; ABP ref PL01.245143 and PL09.246458. In both cases the Board did not consider that particular circumstances arose that would necessitate the limiting of exempted development.

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 conditions and limitations outlined in Class 31 - Column 2, Part 1 of Schedule 2 - expressly state, inter alia, what the maximum allowable number of exempt antennae is. The applicant must comply with these conditions and limitations and any equipment falling outside the conditions and limitations must be subject to an application for permission.

The applicant should be permitted to avail of the exemptions without restrictions imposed by condition no. 3 which 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. This condition should therefore be omitted.

7.5. Appropriate Assessment

Having regard to the nature and scale of development proposed, namely the retention of fully completed works, and to the nature of the receiving environment, 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 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 condition number 3.

9.0 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, which encourage applicants to share facilities and to satisfy the authority that they have made a reasonable effort to share,
- (b) the provisions of the North Tipperary County Development Plan 2010,
- (c) the provisions of the Planning and Development Regulations 2001, as amended, in respect of exempted development for telecommunications and in particular the conditions and limitations contained therein, and
- (d) the nature and scale of the development proposed for retention,

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

Ciara Kellett
Senior Planning Inspector
14th November 2016