



An  
Bord  
Pleanála

## Inspector's Report PL03.247066

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<b>Development</b>	Installation of a 24m slimline monopole structure carrying shrouded telecommunications equipment, at Ballybran TD, Ogonnelloe, Co. Clare.
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	16/409
<b>Applicant(s)</b>	Signal Infrastructure Ltd.,
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Appellant(s)</b>	1. Signal Infrastructure Ltd.,
<b>Observer(s)</b>	1. Joseph & Anna Lynch, Colin Danagher
<b>Date of Site Inspection</b>	12/10/16
<b>Inspector</b>	Gillian Kane

## 1.0 **Site Location and Description**

- 1.1. The subject site is located on a narrow, winding third class road that runs on the lower slopes of Caher Mountain – an upland area in the townland of Ballybran in east Clare. The very rural area with limited settlement or agricultural holdings is approx. 0.65km east of the R463 that runs north to the village of Ogonnelloe. To the immediate north of the subject site is a Coillte Forest and further west along the road is a small quarry.
- 1.2. The subject site is a triangular shaped clearing on the northern side of the road. The site is bound on two sides by Coillte forestry and scrub. Due to the high level of foliage on all sides, visibility to and from the site is very limited. A single residence, under construction, is located approx. 100m south of the site. A single dwelling with a number of outbuildings is located approx. 350m along the road to the south-east, approx. 190m as the crow flies.
- 1.3. Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

## 2.0 **Proposed Development**

- 2.1. Permission was sought to install a 24m slimline monopole carrying shrouded telecommunications equipment together with associated exchange containers in a fenced compound of 10mx10m with access off an existing track screened within a forestry holding.
- 2.2. A cover letter submitted with the application states that the east Clare area is deficient in 3G voice and data and 4G data services. The proposed location was chosen as it was capable of providing voice and 3/4G connectivity for broadband data to the widest catchment and that the proposed pole is anticipated to be entirely screened from view.

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

By order dated 15<sup>th</sup> July 2016 Clare County Council an order of intention to REFUSE permission for the following reason

It is an objective of Clare County Development Plan 2011-2017 as set out in Objective 10.15, to restrict development of telecommunications masts within 250m of residential dwellings. It is considered that the proposed development by reason of its proximity to existing dwelling houses, would be contrary to this objective. Furthermore, the Planning Authority is not satisfied based on the details submitted to date that the need for a telecommunications structure at this location has been demonstrated or that options for co-location have been fully demonstrated. The proposed development would therefore seriously injure the amenities, or depreciate the value of property in the vicinity, and would be contrary to the proper planning and sustainable development of the area.

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

**Planning Report:** Proposed development is contrary to CDP Objective 10.15 as it is within 250m of residential dwellings. Variance in height of the landscape would result in the mast being overly dominant and would seriously impact on residential amenities of dwellings. Applicant has not demonstrated that co-locating on the existing Meteor or O2 sites would not provide improvement. Nor has applicant demonstrated that that co-location on Vodafone sites on the eastern shore has been considered. Subject landscape is highly visible and a designated heritage landscape. Proposed mast is not visually obtrusive. Recommendation to refuse permission.

### 3.3. **Prescribed Bodies**

IAA / Shannon Airport Authority: Proposed mast will not have significant flight safety impact for aircraft approaching Shannon airport and there is no requirement for lighting.

### 3.4. **Third Party Observations**

Objection on behalf of Joseph & Anna Lynch, Colin Danagher and Michael Keogh, all of whom live along the laneway. The proposed development will impact upon their residential amenity, is not the most appropriate site, will be visually obtrusive and will cause damage to the lane from construction traffic.

#### 4.0 **Planning History**

None on file.

#### 5.0 **Policy Context**

##### 5.1. **Telecommunications Antennae and Support Structures - Guidelines for Planning Authorities (1996)**

These set out current national planning policy in relation to telecommunications structures and address issues relating to, inter alia, site selection; minimising adverse impact; sharing and clustering of facilities; and development control. The Guidelines are generally supportive of the development and maintenance of a high quality telecommunications service.

##### 5.2. **Telecommunications Antennae and Support Structures and DoECLG Circular Letter PL07/12**

The 2012 Circular letter set out to revise sections 2.2. to 2.7 of the 1996 Guidelines. Of relevance to the subject appeal is **section 2.3** which referred to the development plan and separation distances and states as follows: “The 1996 Guidelines advised that planning authorities should indicate in their development plans any locations where, for various reasons, telecommunications installations would not be favoured or where special conditions would apply, and suggested that such locations might include lands whose high amenity value is already recognised in a development plan, protected structures, or sites beside schools. While the policies above are reasonable, there has, however, been a growing trend for the insertion of development plan policies and objectives specifying minimum distances between telecommunications structures from houses and schools, e.g. up to 1km. Such distance requirements, without allowing for flexibility on a case-by-case basis, can make the identification of a site for new infrastructure very difficult. Planning authorities should therefore not include such separation distances as they can inadvertently have a major impact on the roll out of a viable and effective telecommunications network”.

Section 2.6 of the Circular letter refers to Health and Safety Aspects and reiterates the advice of the 1996 Guidelines that planning authorities should

not include monitoring arrangements as part of planning permission conditions nor determine planning applications on health grounds. Planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matters in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process.

### 5.3. **Clare County Development Plan 2011 - 2017**

- 5.3.1. Section 10.3.14 of the development plan refers to telecommunications Infrastructure. The plan states that fast reliable and cost effective telecommunications can encourage economic development in an area and can enrich the quality of life at home by offering new choices in education, entertainment and communications. Clare County Council will respond positively to developments of telecommunications infrastructure whilst taking into account other planning policies. The Council will have regard to planning guidelines provided by the DoEHLG Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities in assessing proposals for telecommunications infrastructure and support structures. The Planning Authority will work with the telecommunications providers to facilitate the development of infrastructure that respects the recognised values of the natural and built heritage and will seek to encourage the collocation of masts and antennae on existing structures within the County.
- 5.3.2. **Objective CDP 10.15** Development Plan states that it is an objective of Clare County Council: To facilitate the provision of telecommunications services at appropriate locations within the County having regard to the DoEHLG Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities and To restrict development of telecommunication masts within 250m of residential dwellings.

- 5.3.3. **Objective CDP 10.16** states that it is an objective of Clare County Council to facilitate the delivery of a high capacity ICT infrastructure and broadband network and digital broadcasting throughout the County.
- 5.3.4. **Objective CDP 10.17** states that it is an objective of Clare County Council to support a programme of broadband connectivity throughout the County and implement the National Broadband Strategy in conjunction with the Department of Communications, Marine & Natural Resources.
- 5.3.5. **Appendix 7** of the development plan lists R463 as a scenic route from O'Briensbridge through Killaloe to outside Ogonnelloe and from Tuamgraney to Mountshannon.
- 5.3.6. **Appendix 8** of the development plan states that the development plan has taken account of the Telecommunications Antennae and Support Structures (July 1996) guidelines with the inclusion of objective CDP 10.15. It notes that CDP 10.15 is technically not in accordance with the guidelines in so far as it includes sub-objective (b) to restrict the development of telecommunications masts within 250 metres of residential dwellings. This restriction was included to ensure that established residential amenities are safeguarded in the development of all future telecommunications masts within the County.

#### 5.4. **East Clare Lap 2011- 2017**

- 5.4.1. The subject site is outside a designated village, town or cluster as identified in the East Clare LAP. The plan does not have a policy on telecommunications structures or broadband services.

### 6.0 **The Appeal**

#### 6.1. **Grounds of Appeal**

The grounds of appeal can be summarised as follows:

- Objective CDP10.15 is contradictory as it facilitates compliance with the Telecommunications Guidelines but requires a separation distance. The Council's has acknowledged this conflict in Appendix 8 stating that CDP 10.15 is technically not in accordance with the Guidelines but that the

restriction was included to ensure that established residential amenities are safeguarded.

- It is noted that the established residential community in the subject case refers to two dwellings houses. Property A, 110m downhill of the subject site has been unoccupied for a considerable time. It is surrounded by well-established natural coverage such that direct views of the proposed structure are unlikely. Most aspects from the property are towards Lough Derg – i.e. away from the proposed development.
- The second dwelling, Property B, is a bungalow 180m downhill of the subject site. There will be some impact on the view uphill from this dwelling but it will not be serious or overly dominant. The impact is lessened by the existing natural screening. The existing trees which will be retained until 2030 will completely screen the compound, cabinets and lower sections of the pole. Screening at the dwelling house will also help mitigate views. The degree of impact is consistent with the provision of similar services such as pylons.
- The finding of the Planning Authority that the proposed development will affect the value of property in the vicinity is not substantiated by the property market where there has been no recognised impact on property values from telecommunications structures.
- The Board has been consistent in overturning policy in CDP 10.15. in PL08.234261 the inspector found the 1km setback to be unrealistic. In PL08.236203 the Inspector found that there was no evidence to support a claim of property depreciation. In PL08.225718 the Inspector noted that the Board has consistently overturned the stated reason for refusal. It is submitted that the inclusion of the policy is at variance with the development plan, the national guidelines and the interests of people and business.
- It is submitted that the application makes every effort to minimise the impact of the proposed structure on the heritage landscape. Only as a last resort was a new mast considered. All stakeholders were engaged in advance. There were no objections to the development from An Taisce, the IAA or the wider community. Photomontages show no visual

impact, which was acknowledged by the Council in their planning report. The finding of the Planning Authority that the proposed mast would be visually dominant from and seriously impact the residential amenities of the two dwellings is therefore questioned. The Board is requested to set aside these assumptions.

- The applicant was not granted the option of addressing the issue of requirement. It is submitted that Vodafone clearly indicated that there were no suitable co-location sites locally and that there was poor existing service available to its customers. The area of Ballybran is shown on a National Broadband Plan map as requiring State intervention in the provision of broadband services. Two existing telecoms structures in Tipperary were pinpointed by the Planning Authority as possible being suitable. It is submitted that the Planning Authority is not in a position to make such a determination. The applicant has ruled out all nearby structures, as follows:
  - Townlough- not a traditional telecoms structure capable of co-location. Photo, email from O2 and map data submitted in support of this claim.
  - Coolbaun – mast 5km from the subject site, already carrying Vodafone equipment which cannot serve Ballybran due to topography
- The proposed development should have been assessed on a case by case basis as recommended in the Ministerial Directive. Separation distances prevent adequate telecommunications services as they can have a major impact on the roll out of viable and effective telecommunications network. The Board is requested to grant permission.

## 6.2. **Planning Authority Response**

The proposed development is contrary to CDP10.15 of the development plan, to restrict development of telecommunications masts within 250m of residential dwellings. The site sites 110m and 180m from two residential properties. I note Circular Letter PL07/12 in this regard and its advice in



relation to the Development Plan and Separation Distances. However, notwithstanding the presence of policy CDP10.15 the proposed separation distances are considered excessively close to the identified properties in the first instance and would interfere with the residential amenity of same. Having regard to other identified masts in the wider area, the need for a new mast was not justified. The Board is requested to refuse permission.

### 6.3. **Observations**

On behalf of Joseph & Anna Lynch and Colin Danagher of Ballybran, Ogonnelloe, an agent makes the following observations:

- All three live on the laneway on which the proposed mast is to be located.
- The dwelling of the Lynches is not derelict but under-going restoration to provide a family home. The works are exempt.
- The natural screening referred to in the appeal can be removed as it is not in the control of the applicant. The result would be a visually dominant mast which would seriously impact the residential amenities of the dwellings.
- The Board is requested to note that there is 4G Vodafone mobile broadband in the area. The Board is requested to consider the option of moving the mast upslope to provide greater screening and greater separation distances. Section 4.3 of the 1996 guidelines supports the provision of masts in forest holdings. The option of locating the mast in the nearby quarry was not considered.
- The proposed development removes a turning circle which will need to be replaced / relocated.
- The impact of the proposed development on visual amenity should have formed a Planning Authority reason for refusal. The R463 is a designated scenic route and the laneway is a local walking / hiking trail. The subject site is located in a designated heritage landscape, to which Objective CDP 16.5 applies. The subject site is not the most suitable location for the proposed development as it will be visually strident. When the Coillte forest is harvested in the next 10-15 years the mast will be even more prominent.

- Permission was refused by the Board (PL03.238705) for the retention of an agricultural shed on the grounds of the sensitive scenic rural area, the designated Heritage Landscape and the designation of the R463 as a scenic route. The proposed agricultural shed was a typical agricultural building, on the opposite side of the same scenic route and heritage landscape as the proposed mast. It is submitted that the proposed mast has not demonstrated that a site selection process took place.
- The local walking / hiking route leads to the East Clare Way walking route. The proposed mast would be a visually discordant feature in the landscape. A similar case was refused permission under PL07.237172 on the grounds that the proposed development on a traditional walking route would form a visually discordant feature in the landscape. The Telecommunications Guidelines refer to the impact of such structures on traditional walking routes.
- The already poor condition narrow lane serving the Observers dwellings and the proposed site will be seriously damaged by construction traffic.
- The Board is requested to refuse permission on the grounds that the proposed development is contrary to Objective CDP16.5 of the development plan, of section 4.3 of the Telecommunications Guidelines and would impact on the residential amenity of residential properties in the area.

## 7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of the proposed development
- Visual Impact
- Need for the proposed development
- Appropriate Assessment

## 7.2. **Principle of the proposed development**

As noted above, the 2012 Circular letter regarding telecommunications structures revised sections 2.2. to 2.7 of the 1996 Guidelines. Section 2.3 states that Planning authorities should not include such separation distances as they can inadvertently have a major impact on the roll out of a viable and effective telecommunications network. Policy CDP10.15 of the Clare County Development Plan, which does not allow for flexibility on a case by case basis is not in accordance with the national guidance. The subject site has not been identified in the development plan as being unsuitable for telecoms structures due to its high amenity value, as recommended by the Guidelines.

- 7.2.1. The proposed development is in accordance with Objective CDP 10.16 of the development plan which seeks to facilitate the delivery of a high capacity ICT infrastructure and broadband network and digital broadcasting throughout the County and with Objective CDP 10.17 which seeks to support a programme of broadband connectivity throughout the County and implement the National Broadband Strategy in conjunction with the Department of Communications, Marine & Natural Resources.

## 7.3. **Visual Impact**

- 7.3.1. The subject site is located on the elevated lands, to the east of the regional road and of Lough Derg. Section 4.3 of the 1996 guidelines, states that in relation to the visual impact of a mast on a tourist route the following can be taken into consideration: Along major roads or tourist routes, or viewed from traditional walking routes, masts may be visible but yet are not terminating views. In such cases it might be decided that the impact is not seriously detrimental. Similarly, along such routes, views of the mast may be intermittent and incidental, in that for most of the time viewers may not be facing the mast. In these circumstances, while the mast may be visible or noticeable, it may not intrude overly on the general view of prospect.
- 7.3.2. The proposed mast at 24m high will be visible from a limited area. The views can certainly be described as intermittent, incidental and not terminating a view. The view from the walking route almost certainly is towards Lough Derg and away from the proposed mast. I am satisfied that the visual impact

of the proposed mast on the heritage landscape and on the tourist walking route is not significant.

- 7.3.3. With regard to the visual impact of the proposed mast from the two dwellings along the route, the level of natural screening is extremely high. I note that the Observer makes the case that screening can be removed at any time. While this is true, such is the level of screening in this area that the entire side of the uplands would need to be removed before that mast would be visually dominant from the under-refurbishment dwelling (Lynches) downslope of the mast. The view of the mast from the Danagher property is slightly more pronounced but not materially so. Both the Lynch and the Danagher dwelling are orientated towards Lough Derg and the proposed mast, if visible at all, will only be glimpsed from the rear the either dwelling.
- 7.3.4. In relation to the Boards decision under PL07.237172, the subject route was a heavily used, well maintained and well established walking route with significant local involvement and the proposed mast was deemed to have a consistent visual intrusion on the local amenity. This differs from the subject mast which has an intermittent and an incidental visual impact on the route.
- 7.3.5. In relation to PL07.238705 the proposed agricultural shed to be retained was located alongside a busy regional road on a sweeping bend, at a point where there is a continuous white line along the centre of the road. The Board considered that the additional traffic movements generated by the development at this location would endanger public safety by reason of traffic hazard. The Boards second reason for refusal referred to the sensitive scenic rural area with views and panoramas of Lough Derg, a designated Heritage Landscape from the designated scenic route (R463) as set out in the Clare County Development Plan, 2011-2017 and noted that the proposed agricultural shed by reason of its height, mass, and scale, would be visually incongruous and a visually intrusive feature when viewed from the scenic route and from within the wider heritage landscape. This is not considered comparable to the proposed telecommunications mast which is considered to have no adverse visual impact.

#### **7.4. Need for the proposed development**

7.4.1. The applicant has submitted information on the two masts within the immediate area and has outlined – with evidence in both cases – why they are not suitable for co-location or mast sharing. The applicant has submitted to the Board a report outlining the due diligence undertaken in choosing the subject site, in ruling out the adjoining quarry site and other masts in the wider area. The subject area of Ballybran has been identified in the National Broadband Intervention Strategy as being in need of State intervention. I am satisfied that the applicant has demonstrated the need for the proposed development at this location and that all reasonable alternatives were considered in the assessment.

#### **7.5. Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the proposed development and / or the nature of the receiving environment, and / or proximity to the SPA, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a designated Natura 2000 site.

#### **8.0 Recommendation**

The proposed development is in accordance with national policy on telecommunications structures, as outlined in 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 and updated by the Telecommunications Antennae and Support Structures and DoECLG Circular Letter PL07/12. The proposed development, in an upland area which is well screened from the residential properties in the wider area and from the public road network will not cause any adverse visual impact and is considered to be in accordance with the proper planning and sustainable development of the area. I recommend permission be GRANTED subject to the reasons and considerations below.

## 9.0 **Reasons and Considerations**

- 9.1. Having regard to the nature and extent of the development proposed, the national strategy regarding the improvement of mobile communications services, 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, the general topography and landscape features in the vicinity of the site, and the existing character and pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention would not seriously injure the visual amenities of the area, would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **Conditions**

1. The proposed development shall in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority within three months from the date of this order and the development shall be in accordance with the agreed particulars.
- Reason:** In the interest of clarity.
2. The height of the mast shall be strictly in accordance with the dimensions indicated on the drawing and documentation submitted to the Planning Authority. Notwithstanding the provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the configuration of the mast to be retained shall not be altered without a prior grant of planning permission.
- Reason:** To clarify the nature and extent of the permitted development to which this permission relates and to facilitate a full assessment of any future alterations.

3. In the event of the structure becoming obsolete and being decommissioned the developers shall, to the satisfaction of the planning authority, remove the mast and antennae and associated structures and return the site to its original condition.

**Reason:** In the interest of visual amenity

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within three months from the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

*Gillian Kane*

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Gillian Kane  
Planning Inspector

31 October 2016