



An  
Bord  
Pleanála

## Inspector's Report PL16.247527

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<b>Development</b>	Continued use of existing communications structure with associated equipment.
<b>Location</b>	ESB's existing Dalton Substation, Clare Townland, Claremorris, Co. Mayo.
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	16/659
<b>Applicant(s)</b>	ESB Telecoms Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	First party against conditions
<b>Appellant(s)</b>	ESB Telecoms Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	Not necessary
<b>Inspector</b>	Donal Donnelly

## 1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Clare approximately 1km east of Claremorris in south-eastern Co. Mayo. Access to the site is from the N60 close to its junction with the N17. An access road continues south for a distance of approximately 330m to the appeal site and the ESB's Dalton 110kV substation.
- 1.2. The site contains an existing telecommunications mast and associated equipment within a fenced compound situated to the north of the substation. The structures have been in place for over 10 years.
- 1.3. The surrounding area is semi-rural in character with ribbon development occurring along approach roads to Claremorris and agricultural lands surrounding the site. The nearest dwellings to the site are approximately 300m to the north. The Dublin to Westport rail line is located approximately 200m to the south.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the continued use of the 36m high free-standing lattice type communications structure carrying antennae and communication dishes.
- 2.2. The mast is located within a compound also containing operator equipment cabins and cabinets and surrounded by 2.4m high palisade fencing.
- 2.3. Temporary planning permission was granted previously under Reg. Ref: 11/540.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Mayo County Council issued notification of decision to grant permission for the development subject to five conditions.
- 3.1.2. Condition 2 states that *“the transmitter power output, antennae type and mounting configuration shall be in accordance with the details submitted with this planning application and shall not be altered without a prior grant of permission.”* The reason for this condition is *“to clarify the nature of the development to which this permission relates and to facilitate an assessment of any future alterations to the network.”*

3.1.3. Under Condition 5, the applicant is required to pay a Section 48 financial contribution of €5,000.

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

3.2.1. The recommendation to grant permission as outlined in the Planner's Report, reflects the decision of the Planning Authority.

3.2.2. Under the assessment of the application, it is stated that no time limit shall apply to this permission and that the proposed continuation is acceptable.

3.2.3. The Planning Authority recommends that a financial contribution in the region of €5,000 is appropriate in accordance with the Development Contribution Scheme and reinforced by the Board's precedence under Reg. Ref: 09/1285.

3.2.4. Reference is also made to a recent Board Decision under PL16.245557 which confirms the attachment of a condition under the Development Contributions Scheme for a public utility development. This was the case of a wastewater treatment plant which was also not specifically identified/ named in the Development Contributions Scheme.

## **4.0 Planning History**

### **4.1. Appeal site**

Mayo County Council Reg. Ref: 11/540 (PL16.239713)

4.1.1. Permission was granted for a period of five years for the retention of the 36m high free standing lattice type communications structure previously granted under Reg. Ref: 07/586. Permission was also granted for additional antennae and communication dishes.

4.1.2. A first party appeal was lodged against a cash bond condition and a special contribution condition.

4.1.3. The Board considered that it was reasonable and necessary that a bond for works be put in place to ensure the satisfactory reinstatement of the site but that the requirement to pay the special contribution had not been justified in accordance with the requirements of section 48(12) of the Planning and Development Act, 2000.

Mayo County Council Reg. Ref: 07/586

- 4.1.4. Permission granted for the retention of the existing 36m high, free standing communication structure, carrying antennae and communication dishes within an existing 2.4m high palisade compound (previously granted temporary permission, Reg. Ref: 02/492).
- 4.1.5. Development contributions were to be paid under this permission for amenities (€1,071), community, open space and recreational facilities (€1,071) and roads (€4,557). A cast deposit of €5,000 was also required.

Mayo County Council Reg. Ref: 02/492

- 4.1.6. Permission granted for the erection of 36m free standing communications mast, carrying antennae and communication dishes with associated ground mounted equipment cabinets within a 2.4m high palisade compound.
- 4.1.7. Condition 14 of this permission required the developer (ESB Telecoms) to pay a sum of €2,000 for amenities provided by the Council and from which the development will benefit. A cast deposit bond of €6,348 was also required under Condition 13.

**4.2. Other cases in Co. Mayo**

- 4.2.1. Since January 2014, the Board has determined approximately 16 cases involving development contributions for telecommunications structures in Co. Mayo.
- 4.3. Under PL16.245848, PL16.246688, PL16.246692, PL16.245846 and PL16.245909, the Board ordered the removal of the development contributions condition in the absence of any specific provision in the Mayo County Council Development Contribution Scheme for the levying of financial contributions in respect of telecommunications masts and mobile phone infrastructure.
- 4.4. It was also decided to remove special contribution conditions attached to PL16.244015, PL16.244856, PL16.243953, PL16.245055, PL16.243684, PL16.244717, PL16.243954, PL16.243952, PL16.244014, PL16.243914 and PL16.245847 in the absence of any evidence that specific and exceptional costs would be incurred by the planning authority in providing public infrastructure and facilities to benefit the proposed development.

## **5.0 Policy Context**

### **5.1. Mayo County Development Plan, 2014-2020**

5.1.1. Objectives TC-01 to TC-03 relate to the provision of information and communications technology, including telecommunications structures. It is an objective (TC-03) of the Council to set up a register of approved telecommunication structures in the County to assist in the assessment of future telecommunication developments and to maximize the potential for future mast sharing and co-location.

5.1.2. It is stated within Section 55.3 of Volume 2 that the Council shall consider the potential for co-location of antennae or sharing of sites when assessing an application for telecommunication antennae.

### **5.2. Telecommunications Antennae & Support Structures (1996) & Circular letter PL 07/12**

5.3. These Guidelines encourage the sharing of facilities and clustering to reduce the visual impact on the landscape.

5.4. A circular was issued under Section 28 of the Planning and Development Act, 2000 (as amended) to update certain sections of the Guidelines. Planning Authorities are now advised that temporary permissions should cease.

5.5. Reference is also made to the (then) Draft Guidelines on Development Contributions which stated that all future Development Contribution Schemes must include waivers for broadband infrastructure provision and these waivers are intended to be applied consistently across all local authority areas.

5.6. It is reminded in the adopted Development Contributions Guidelines for Planning Authorities that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

### **5.7. Natural Heritage Designations**

5.8. The River Moy SAC is approximately 7km north-east of the appeal site and Carrowkeel Turlough SAC is approximately 7.2km to the south-west.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A first party appeal pursuant to Section 37 of the Planning and Development Act, 2000 (as amended) has been lodged by the applicant against Conditions 2 and 5 of the notification of decision to grant permission. The grounds of appeal and main points raised in this submission can be summarised as follows:

#### *Condition 2*

- Applicant cannot predict operator requirements as the industry is so fast moving that equipment is constantly being changed and removed due to faults or upgrades.
- Any new equipment (up to 12 pieces) would fall within planning exemptions (Class 31 (h)) and Condition 2 seeks to take away these exemptions.
- Regulations specify dimensions and specific criteria which must be met for equipment to qualify as exempted development – this should be sufficient to satisfy the Council.
- Operators will not wait for a planning permission when they can arrange the lease of a nearby rooftop and erect equipment in line with exempted development regulations.
- Telecommunications guidelines encourage co-location and other planning authorities attach conditions to ensure that the developer makes the mast available to third parties in order to avoid a proliferation of masts – Condition 2 is at odds with local and national policy.
- Existing mast is open to all operators and subject location is deemed the most appropriate in terms of limiting impact on the landscape and viewpoints.

#### *Condition 5*

- ESB has paid contributions to the Council on two separate occasions at this site, (Reg. Refs: 07/586 and 02/492).

- Council reduced the contribution required under Reg. Ref: 07/586 on the basis that the amenities contribution had previously been paid under Reg. Ref: 02/492 (correspondence included with appeal).
- Since 2007, the Board has determined that the repeat attachment of development contributions conditions to the same development constitutes double charging (Refs: PL26.245702 and PL23.235434).

## 7.0 Assessment

- 7.1. This first party appeal has been made pursuant to Section 37 of the Planning and Development Act, 2000 (as amended) against conditions attached to Mayo County Council's decision to grant permission for the continued use of an existing communications structure and associated equipment.
- 7.2. The applicant requests the omission of a standard condition which precludes any amendment to the development, as well as a development contributions condition requiring the payment of €5,000 under Section 48 of the Planning and Development Act, 2000 (as amended).
- 7.3. Section 139 of the Planning and Development Act, 2000 (as amended) allows the Board to give to the relevant planning authority such directions as it considers appropriate relating to the attachment, amendment or removal by that authority either of the condition or conditions to which the appeal relates or of other conditions. In addition, under Section 48 (10)(b), an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the development contributions scheme have not been properly applied in respect of any condition laid down by the planning authority.
- 7.4. I concur with the Planning Authority that the principle of the proposed continuation of use is acceptable. I would therefore be satisfied that an assessment of the case *de novo* would not be warranted, and that the Board should determine the matters raised in the appeal only, in accordance with Sections 139 and 48 of the Planning and Development Act, 2000 (as amended).

## 7.5. Condition 2

- 7.5.1. It is stated under Condition 2 that *“the transmitter power output, antennae type and mounting configuration shall be in accordance with this application and shall not be altered without a prior grant of planning permission.”* The reason for this condition is *“to clarify the nature of the development to which this permission relates and to facilitate an assessment of any future alterations to the network.”*
- 7.5.2. The applicant contends that Condition 2 seeks to take away the exemptions for telecommunications set out under Class 31 (h) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended). Class 31(h) specifies dimensions and specific criteria which must be met for equipment to qualify as exempted development and therefore it is considered that Condition 2 is unnecessary. It is also contended that Condition 2 discourages the use of the telecommunications structures by other operators and this is contrary to local and national policy.
- 7.5.3. According to drawings submitted with the planning application, there are 11 no. pieces of equipment attached to the existing mast. Class 31 (h) states that the attachment of additional antennae to an existing antenna support structure is exempted development where, inter alia, the total number of such antennae shall not exceed 12, of which not more than 8 shall be dish type (whether shielded or not).
- 7.5.4. It would appear, therefore, that the omission of Condition 2 would only allow for one extra antenna to be erected on the structure and any further antenna would require planning permission. Furthermore, the applicant makes the point that Condition 2 would inhibit any replacement or upgrade of existing equipment on the mast. In these circumstances, I agree that Condition 2 is unnecessary and contrary to the principle of co-location as promoted in the Development Plan and Guidelines.
- 7.5.5. Finally, I see no other reason for annulling the exempted development provisions of Class 31(h); the site is not located in any sensitive location where excessive equipment may have visual or perceived health implications.

## 7.6. Condition 5

- 7.6.1. The developer is required under Condition 5 to pay a financial contribution of €5,000 in respect of public infrastructure and facilities benefiting development in the area of



the planning authority that it provided or intended to be provided in accordance with the terms of the Development Contributions Scheme made under Section 48 of the Planning and Development Act, 2000 (as amended).

- 7.6.2. It should be noted that there is no stated provision within the Mayo County Council Development Contribution Scheme for the levying of financial contributions in respect of telecommunications structures, antennae or associated equipment. The Board has determined approximately 16 cases since January 2014 involving development contributions for telecommunications structures in Co. Mayo. Under PL16.245848, PL16.246688, PL16.246692, PL16.245846 and PL16.245909, the Board ordered the removal of the development contributions condition in the absence of any specific provision in the Mayo County Council Development Contribution Scheme for the levying of financial contributions in respect of telecommunications masts and mobile phone infrastructure.
- 7.6.3. Notwithstanding, it is submitted within the Planner's Report that a recent Board Decision (PL16.245557) confirms the attaching of a condition under the Development Contribution Scheme for a public utility (wastewater treatment plant by Irish Water), which is also not specifically identified/ named in the Development Contribution Scheme.
- 7.6.4. I note that "sewerage services" are included in the Development Contribution Scheme for residential, commercial and industrial development but that the Killala scheme permitted under PL16.245557 is not listed within the sewerage schemes for which development contributions are payable. The development contribution condition was attached by the planning authority to its notification of decision to grant permission and this was not one of the conditions that the first party appealed in this case. Reference is also made in the Planner's Report to Reg. Ref: 09/1285 (PL16.236245). However, this case related to a special development contribution.
- 7.6.5. Notwithstanding the above, I consider that each case should be assessed on its own merits. It should also be noted that a development contribution of €2,000 was paid under the original permission at this site (Reg. Ref: 02/492) for amenities provided by the Council and from which the development will benefit. A condition was attached to a subsequent permission (Reg. Ref: 07/586) requiring development contributions to be paid for amenities (€1,071), community, open space and recreational facilities (€1,071) and roads (€4,557). However, the applicant has submitted written

confirmation with the current appeal that only €5,628 was paid on the basis that the “amenities” contribution had been paid under the original planning permission.

7.6.6. It is stated in the Development Contributions Guidelines for Planning Authorities that *‘the practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.’*

7.6.7. Having regard to the fact that development contributions amounting to more than the amount now sought have already been paid for the existing development, and to the precedent set by the Board’s previous decisions concerning similar telecommunications cases in Co. Mayo, I consider that the terms of the Co. Mayo Development Contribution Scheme have been incorrectly applied in this case and that Condition 5 should be removed.

## 7.7. **Appropriate Assessment**

7.7.1. Having regard to the nature of the proposed development and/or nature of the receiving environment and/or proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the 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. It is recommended that Conditions 2 and 5 should be omitted for the following reasons and considerations.

## 9.0 **Reasons and Considerations**

1. Having regard to the nature of Condition 2 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 directs

Mayo County Council under subsection (1) of section 139 of the Planning and Development Act, 2000 (as amended) to REMOVE said condition, which would otherwise serve to annul the exempted development provisions of Class 31(h) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

2. The Board, in accordance with section 48 of the Planning and Development Act, 2000, (as amended) considered that the terms of the Mayo County Council Development Contribution Scheme for the area had not been properly applied in respect of Condition 5 and directs the said Council to REMOVE said condition. The proposed development is for continuance of use of an existing telecommunications mast and mobile phone infrastructure. In the absence of any specific provision in the Mayo County Council Development Contribution Scheme for the levying of financial contributions in respect of telecommunications masts and mobile phone infrastructure, it is considered that the terms of the Scheme have not been properly applied by the planning authority in this instance. Furthermore, it is considered that it would be inappropriate to attach a development contribution condition under section 48 of the Planning and Development Act, 2000 (as amended) in this instance as development contributions have been paid for this development at this site under Reg. Refs: 02/492 and 07/586 and to apply a development contribution condition in this instance would amount to “double charging”.

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Donal Donnelly  
Planning Inspector

20<sup>th</sup> January 2017