



An  
Bord  
Pleanála

## Inspector's Report PL92.247741.

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<b>Development</b>	Continued use of the existing 30-metre-high communication structure.
<b>Location</b>	ESB substation, Gortybrigane, Birdhill, County Tipperary.
<b>Planning Authority</b>	Tipperary County Council.
<b>Planning Authority Reg. Ref.</b>	16600945.
<b>Applicant(s)</b>	ESB Telecoms Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Permission with conditions.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	ESB Telecoms Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	8 <sup>th</sup> February 2017.
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

- 1.1. The site is located on the northern approach to the village of Birdhill, which is located midway between Nenagh and Limerick city. The site has frontage onto the R494 which links the villages of Killaloe and Ballina to Birdhill. The site also located just off and to the west of a roundabout which has arms into Birdhill, Nenagh via the R445 (old N7) and the M7.
- 1.2. The site is an enclosed compound within a 2.4 metres chain link fence and has a stated area of 160m<sup>2</sup>. The site is located immediately to the west of a larger electricity substation compound and is wholly independent of the substation with its own individual access onto the R494.

## 2.0 Proposed Development

- 2.1. The proposed development as submitted to the planning authority is for the continued use of the 30-metre-high telecommunication monopole structure carrying antennae and communication dishes.

## 3.0 Planning Authority Decision

### 3.1. Decision

The decision of the planning authority was to grant planning permission subject to 4 conditions. The following conditions are noted.

Condition 2 refers to reinstatement of the site in the event of the cessation of operations on the site.

Condition 3 is also of note stating,

*The antennae support structure shall be used to facilitate the co-location and erection of suitable antennae facilities for other telecommunications operators. No additional communications antennae, drum shaped dishes or other telecommunication equipment shall be fitted without a prior grant of planning permission.*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The planning report refers to the

- Site history;
- Planning policy
- An appraisal which concludes the development is acceptable

## 4.0 Planning History

The site has a planning history

**ABP Ref. No. PL22.126644/P.A. Ref. No. PLC/24059.**

Permission granted for a period of five years for a 30 metres high mast on the site on the 16<sup>th</sup> of April 2002.

**P.A. Ref. No. 07510272.**

Permission granted for a further period of five years for a 30 metres high mast on the site on the 23<sup>rd</sup> of May 2007. Condition no.6 required payment of a financial contribution of 7,137.86 euro.

**P.A. Ref. No. 12510007.**

Permission granted for a further period of five years for a 30 metres high mast on the site on the 4<sup>th</sup> of April 2012.

## 5.0 Policy Context

5.1. The relevant plan is the **North Tipperary County Development Plan 2010-2016** as varied to include an extension of the duration of plan.

5.2. 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”.*

### **5.3. National Guidelines**

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

The guidelines provide guidance on policy and planning issues. 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”.

Ministerial Circular PL07/12 reaffirms the 1996 and the promotion of clustering and shared services to minimise visual impact and intrusion.

## **6.0 The Appeal**

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

The grounds of appeal as submitted are in relation to condition no.3 of the planning authority’s decision relating to co-location and facilitating other telecommunication operators

- The condition is contradictory in encouraging co-location but not permitting other equipment to be erected without a prior grant of planning permission.
- Should the applicant as the structure is acceptable, not be allowed of the exemptions specified in Class 31(h).
- This exemption was created for the purposes of providing infrastructure without the need to revert to the planning authority for each piece of equipment.
- The condition is impractical for smaller broadband providers if they have to wait for planning permission and the condition is unhelpful in the roll out of upgraded telecom services.
- The industry is changing and it is fast moving and equipment is constantly being changed.
- Reference is made to the approach adopted in other local authorities to meet the changing environment of the telecommunications industry and reference is made to decisions made in Galway, South County Dublin and Clare. Reference is made to a condition in a permission in County Tipperary which refers to Class 31 (P.A. Ref. No 156000766).
- It is requested that if an operator wishes to co-locate that the additional equipment fall within Class 31 and if it does not the development would revert back to the planning process.
- Reference is made to national policy in the provision and roll out good quality telecommunication services.
- There is also reference to the current North Tipperary County Development Plan and to section 9.9 which also recognises the need for upgrading of telecommunication services.
- The submission makes reference to Board's decisions in relation to the application of a condition de-exempting additional equipment on mast sites.
- The Board is requested to remove condition no. 3.

## 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.

The subject appeal relates to the continued use of an existing mast on the appeal site. A mast has been granted on the site since 2002 and the principle of continuance of the use has not been raised as an issue by the Planning Authority. #

Having reviewed the correspondence, I am satisfied that there is no need to revisit the Planning Authority decision to grant permission. I am also satisfied that the Board may consider the subject appeal of condition no. 3 under section 139 of the Act.

The appellant in the grounds of appeal considers that as the structure is acceptable, should the mast not be allowed to avail of the exemptions specified in Class 31(h) of the 2001 Planning and Development Regulations 2001 as amended. The appellant contends that this exemption was created for the purposes of providing infrastructure without the need to revert to the planning authority for planning permission for each piece of equipment.

Reference is also made to the changing needs of the telecommunications industry, that Class 31 is clear in relation to what is or is not exempt and if equipment is required, which is not exempt, there is a requirement to revert to applying for planning permission. Although no additional equipment is proposed at this time the changing nature of telecommunications does require equipment to be upgraded and changed.

- 7.2. 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 in subsection (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; and (j) an antenna support structure in place of an existing antenna support structure. All

are the exemptions 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.

- 7.3. Class 31 provides for exemptions, which in this case, avoid the telecommunication services operator having to revert to planning permission in relation for changes of/to equipment and provision of additional equipment within limitations specified. 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.
- 7.4. It has already been determined through the planning process that the proposal is a suitable location for such a structure. The development complies with national and local policy and guidance. It would therefore, I consider, be unreasonable to attach a planning condition that de-exempts exempted development for no apparent reason. The applicant should therefore, I consider, be permitted to avail of the exemptions without the restrictions as imposed by condition no. 3, which could in fact give rise to a demand for additional structures in the. The condition should therefore be omitted.

## **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 Antennaes 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,

(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 planning history of the site and the nature and scale of the development for which continued use has been sought,

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

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Derek Daly  
Planning Inspector

10<sup>th</sup> February 2017