



An  
Bord  
Pleanála

## Inspector's Report PL25M.248395

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<b>Development</b>	Permission for the continued use of the existing 30-metre-high free standing communication structure.
<b>Location</b>	ESB Substation, Townparks, Castlepollard, Co. Westmeath.
<b>Planning Authority</b>	Westmeath County Council.
<b>Planning Authority Reg. Ref.</b>	17/6048.
<b>Applicant(s)</b>	ESB Telecoms.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	None.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	01/08/2017.
<b>Inspector</b>	Karen Kenny.

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## 1.0 Site Location and Description

1.1. The site is located on the north eastern outskirts of Castlepollard in County Westmeath and forms part of a larger ESB Networks compound. Lands to the north and east are in industrial use and there are dwellings to the west and south of the site.

## 2.0 Proposed Development

2.1. Permission sought for the continued use of an existing 30-metre-high free standing communication structure, carrying antennae and communication dishes that is housed within an existing fenced compound. The development was previously granted temporary permission under Ref. 02/62, Ref. 07/2189 and Ref. 12/2022.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission granted subject to 4 no. conditions.

- Condition no. 2 of the permission states that the development shall be in accordance with the plans and details received by the Planning Authority and that it shall not be altered or added to without a prior grant of planning permission.
- The duration of the subject permission is not limited.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning Officers Report reflects the decision to grant permission. The report notes that the principle of such development at this location is long established.

#### 3.2.2. Other Technical Reports

District Engineer: No objection.

### 3.3. Prescribed Bodies

**Health Service Executive (EHO):** No documentation in relation to compliance with international safety guidelines on electromagnetic radiation.

### 3.4. Third Party Observations

None.

## 4.0 Planning History

### Appeal Site

#### Ref. 02/62:

Permission granted for a 30-metre-high mast carrying antennae and communication dishes with associated ground mounted equipment cabinets on the appeal site.

Permission restricted to a period of 5 years.

#### Ref. 07/2189:

Permission granted to retain a 30-metre-high mast carrying antennae and communication dishes within a fenced compound. Permission restricted to a period of 5 years.

#### Ref. 08/2039:

Permission granted for attachment of 3 no. 2.8 metre omni antennas together with associated equipment and cabinet to existing 30-metre-high mast.

#### Ref. 12/2022:

Permission granted to retain a 30-metre-high mast carrying antennae and communication dishes within a fenced compound. Permission restricted to a period of 5 years.

## 5.0 Policy Context

### 5.1. National Guidance

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 that 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”. The guidance document was updated by Circular Letter PL 07/12. The Circular specifically refers to temporary permissions, separation distances from houses and schools, bonds and contributions, health and safety matters and the establishment of a register / database.

### 5.2. Development Plan

The Westmeath County Development Plan 2014-2020 is the relevant statutory plan for the area. Section 10.15.2 relates to Information Communications and Technology and includes the following objectives:

- P-ICT1** To support the delivery of high capacity Information Communications Technology Infrastructure, broadband connectivity and digital broadcasting, throughout the county, in order to ensure economic competitiveness for the enterprise and commercial sectors and in enabling more flexible work practices e.g. teleworking.
- P-ICT2** To support the co-ordinated and focused development and extension of broadband infrastructure throughout the county.
- P-ICT3** To co-operate with the Department of Communications, Energy and Natural Resources and public and private agencies where appropriate, in improving high quality broadband infrastructure throughout the county.
- P-ICT4** To achieve a balance between facilitating the provision of telecommunications infrastructure in the interests of social and

economic progress, and sustaining residential amenity and environmental quality.

- P-ICT5** To ensure that the location of telecommunications structures should minimise and / or mitigate any adverse impacts on communities, public rights of way and the built or natural environment.
- P-ICT6** To encourage co-location of antennae on existing support structures and to require documentary evidence as to the non-availability of this option in proposals for new structures. The shared use of existing structures will be required where the numbers of masts located in any single area is considered to have an excessive concentration.
- P-ICT7** To facilitate the provision of telecommunications infrastructure throughout the county in accordance with the requirements of the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities” July 1996 and Circular Letter PL 07/12.

Development Management Standards set out in Section 14.11.2 of the Development Plan reflect the above objectives.

The Castlepollard Settlement Plan forms part of the County Development Plan and comprises a written statement and zoning map. The appeal site is zoned Enterprise and Employment.

### 5.3. **Natural Heritage Designations**

None

## 6.0 **The Appeal**

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

A first party appeal against condition no. 2 of the planning permission has been submitted by the applicant. The grounds of appeal can be summarised as follows:

- Condition no. 2 is unhelpful in the rollout of upgraded telecom services. The need for equipment is wholly operator driven. It is not feasible or logical for

planning permission to be lodged for each alteration as they are installed at quick intervals due to faults or upgrades in operator lines. Usually one piece of equipment is swapped for another.

- National, regional and local policy recognises the importance of telecommunications infrastructure and supports the continued development of such infrastructure.
- The exemptions specified in Class 31 of the Planning and Development Regulations should be available, as they were created for the purpose of providing infrastructure without the need to revert to the local planning authority.
- The structure must be open to co-location in line with government guidance and condition no. 3 of the permission. Condition no. 2 contradicts this. The structure is currently used by four mobile network operators, a broadband provider, the emergency services and the ESB.
- Conditions from other planning authorities encourage co-location to avoid a proliferation of telecommunication structures.
- The structure is in the most appropriate location in terms of limiting impact on the landscape and viewpoints, adjoining a factory and established utility infrastructure. The availability of this structure protects the surrounding area from any inappropriate development of structures for single operators.
- Most telecommunication equipment is swapped out or upgraded on a like for like basis to accommodate new technologies such as 4G and the upcoming 5G.
- The exemptions would be utilised if an additional operator wished to co-locate on the structure. Development would revert back to the planning process if the exemptions are fully utilised.
- The condition is impracticable for smaller broadband providers, who will not utilise this structure if they have to wait for planning permission and are not guaranteed a positive outcome.

- The restriction on ancillary equipment would mean that upgrade improvements (ground equipment, amplifiers and 5G antenna) would require permission.
- The Planning and Development Regulations specify the dimensions and specific criteria which must be met for equipment to qualify as exempted development, which should be sufficient to satisfy the Council.
- Recent An Bord Pleanála orders directing the removal of similar conditions are cited in the appeal submission.

## 6.2. **Planning Authority Response**

None

## 6.3. **Observations**

None

## 6.4. **Further Responses**

None

## 7.0 **Assessment**

### 7.1. **Appeal against condition**

7.1.1. The first party appeal against the Planning Authority decision to grant permission relates solely to condition no. 2.

7.1.2. 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 the condition or conditions to which the appeal relates or other conditions. The subject appeal relates to the retention of an existing telecommunication mast at a suitable site, which has previously been granted

temporary permissions under Ref. 02/62, Ref. 07/2189 and Ref. 12/2022. I am satisfied that the consideration of the proposed development 'de novo' by An Bord Pleanála would not be warranted in this case. Accordingly, I recommend the Board should use its discretionary powers under Section 139 of the Planning and Development Act 2000 (as amended), and issue the Planning Authority directions to retain, remove or amend condition no. 2.

## 7.2. Exemptions

7.2.1. Class 31 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), outlines exempted development categories for a statutory undertaker authorised to provide a telecommunications service including the following categories;

(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.

7.2.2. The applicant has stated that there is a continued requirement for this strategic piece of infrastructure and that there has not been any technological advance that would facilitate the removal of the structure. The grounds of appeal argue that the structure is in the most appropriate location in terms of limiting impact on the landscape and viewpoints. The grounds of appeal also argue that the structure must be open to co-location in line with government guidance and condition no. 3 of the permission and that condition no. 2 of the grant of permission contradicts this and hinders co-location on the structure. I would note that four mobile network operators, a broadband provider, the emergency services and the ESB currently have equipment erected on the structure.

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 at the edge of an industrial area on the north eastern outskirts of Castlepollard in Co. Westmeath and is screened by planting. 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 three other cases recently decided by the Board. I have reviewed these cases and note that the appeals were taken to request removal of similar conditions limiting exemptions; ABP ref PL01.245143, PL09.246458 and PL92.247042. In these 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 site is a suitable location for such a structure. I would note that the Planning Officer's Report did not outline any case or reasoning for limiting the exempt development provisions. Having regard to the foregoing, and national guidance for telecommunications structures that advocates co-location, use of existing structures and the continued development of infrastructure and to the relevant County Development Plan policies set out above, I would consider that it is not necessary to attach a planning condition that de-exempts exempted development.

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, therefore, I consider be permitted to avail of the exemptions without the restrictions imposed by condition no. 2, which could in fact give rise to a demand for additional structures in the area which would be contrary to national guidance and 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 2.

#### 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 Westmeath County Development Plan 2014-2020,
- (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 proposed development,  
the Board did not consider that particular circumstances arose that would necessitate the limiting of exempted development in this case.

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Karen Kenny  
Planning Inspectorate

2<sup>nd</sup> August 2017