



An  
Bord  
Pleanála

## Inspector's Report PL17.248540

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<b>Development</b>	Continuance of use for 30 metre telecommunications support structure
<b>Location</b>	Cabragh townland, Kells, Co. Meath
<b>Planning Authority</b>	Meath County Council
<b>Planning Authority Reg. Ref.</b>	KA/170218
<b>Applicant(s)</b>	Signal Infrastructure Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	GRANT
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Signal Infrastructure Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> August 2017
<b>Inspector</b>	Niall Haverty

## **1.0 Site Location and Description**

- 1.1. The appeal site comprises a telecommunications compound and access track, with a stated site area of 0.15 ha on the northern side of the L-68242-0 local road in the townland of Cabragh, c. 7km north west of Kells, Co. Meath. The telecommunications support structure is a 30 metre high steel lattice structure supporting a variety of antennae and dishes. The compound also includes a number of equipment cabins and is surrounded by a 2.4m high palisade fence.
- 1.2. The appeal site is located within a forestry plantation and the wider area comprises a mix of forestry and agricultural grassland.

## **2.0 Proposed Development**

- 2.1. The proposed development consists of the continuance of use of the existing 30m high telecommunications support structure carrying associated antennae and link dishes, associated equipment cabinet (as per previous planning Ref. KA/901199) and permission for additional antennae and link dishes and associated cabinet, including existing security fencing and access track.
- 2.2. It is stated that the development will continue to form part of the existing 3G broadband network.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The Planning Authority decided to grant permission and Condition 6 which forms the subject of this appeal states:

“The installation shall be inspected and monitored at yearly intervals. This shall be carried out without prior notice, under normal operating conditions by

a competent authority using standardised measurement procedures and survey techniques.

**Reason:** In the interests of public health.”

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

3.2.1. The Planning Officer’s report can be summarised as follows:

- Continued use of the structure is in accordance with Development Plan policy.
- Proposed addition of antennae, dishes and cabinets is in accordance with Development Plan policy.
- Proposed development is acceptable in terms of visual impact.
- Having regard to the limited traffic movements associated with the proposed development, it is considered that the existing access arrangements are sufficient.
- The proposed development by itself or in combination with other plans and developments in the vicinity would not be likely to have a significant effect on European sites and a Stage 2 AA is not required.
- The site is not located within a flood zone and the proposed development will not pose a flood risk.
- Development contribution was paid in accordance with previous permission. No new development contribution condition will be applied.

### 3.3. **Other Technical Reports**

3.3.1. None received.

### 3.4. Third Party Observations

3.4.1. None received.

## 4.0 Planning History

4.1. The following planning applications relate to the appeal site:

- **ABP Ref. PL17.240975, Reg. Ref. KA/120478:** Permission granted, following an appeal against a development contribution condition, to retain a 30 metre high antenna support structure, antennae, dishes, cabinets, fencing etc. Permission was granted for a five year period.
- **KA/901199:** Permission granted for the erection of a 30m high antenna support structure, antennae, dishes, cabinets and fencing. Permission was granted for a five year period.

## 5.0 Policy Context

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

5.1.1. These Guidelines set out the criteria for the assessment of telecommunications structures. The relevant points to this case are summarised below.

- An authority should indicate any locations where telecommunications installations would not be favoured or where special conditions would apply. Such locations might include high amenity lands or sites beside schools. (Section 3.2).

- In rural areas towers and masts can be placed in forestry plantations provided of course that the antennae are clear of obstructions. This will involve clearing of the site but in the overall will reduce visual intrusion. (Section 4.3).
- The sharing of installations and clustering of antennae is encouraged as co-location will reduce the visual impact on the landscape. (Section 4.5).
- Legislation is to be enacted by the Department of Transport, Energy and Communications later this year setting up an independent regulator for the telecommunications sector. It is envisaged that, as part of this legislation, the regulator will be specifically required to arrange for monitoring, on a nationwide basis, of emissions of non-ionising radiation from mobile telephone base station towers and MMDS masts.

Furthermore, as part of the licensing framework being developed by the Minister for Transport, Energy and Communications in relation to mobile telephony, operators are now being required to comply with the relevant international standards in relation to emissions of non-ionising radiation from telecommunications antennae.

Accordingly, planning authorities should not include monitoring arrangements as part of planning permission conditions. Operators should comply with all requests for information relating to the technical operation of base stations and should facilitate access to base stations by duly authorised members of the monitoring body. (Section 4.6)

## **5.2. Circular Letter PL07/12**

- 5.2.1. This Circular Letter revises elements of the 1996 Guidelines. In particular, Section 2.2 advises Planning Authorities to cease attaching time limiting conditions to telecommunications masts, except in exceptional circumstances. Section 2.6 relates to 'Health and Safety Aspects' and states that:

- “The 1996 Guidelines advise that planning authorities should not include monitoring arrangements as part of planning permission conditions nor determine planning applications on health grounds. This Circular Letter reiterates that advice to local planning authorities. 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. Development Management Guidelines for Planning Authorities, 2007**

#### **5.3.1. Section 7.8 relates to ‘conditions relating to other codes’ and states that**

- “There has been a tendency to attach to planning permissions conditions relating to matters that, though of concern in the exercise of development management, are the subject of more specific controls under other legislation or are directly regulated by other statutes or by the common law...It is inappropriate, however, in development management, to deal with matters which are the subject of other controls unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be dealt with effectively by other means. The existence of a planning condition, or its omission, will not free a developer from his or her responsibilities under other codes and it is entirely wrong to use the development management process to attempt to force a developer to apply for other some licence, approval, consent, etc.”

#### 5.4. Meath County Development Plan 2013-2019

5.4.1. Sections 8.2 and 11.12 of the County Development Plan relate to telecommunications. The CDP notes that an efficient telecommunications system is important in the development of the economy. It supports co-location and sharing of existing structures and notes that the preferred location for masts in rural areas is in forestry plantations, provided that the antennae are clear of obstruction and a cordon of trees is retained around the site.

5.4.2. Relevant Policies include:

- EC POL 25: To facilitate the delivery of a high capacity ICT infrastructure and broadband network and digital broadcasting.
- EC POL 26: To encourage the further co-ordinated and focused development and extension of telecommunications infrastructure including broadband connectivity.
- EC POL 27: To encourage coverage and capacity of mobile technology network infrastructure, while endeavouring to reduce the number of telecommunications structures.
- EC POL 28: To facilitate the development of telecommunications based services at appropriate locations within the County, subject to environmental considerations.
- EC POL 33: To promote orderly development of telecommunications infrastructure in accordance with the requirements of the Guidelines for Planning Authorities and Circular Letter PL 07/12.
- EC POL 34: To promote best practice in siting and design in relation to the erection of communication antennae.

- EC POL 35: To secure a high quality of design of masts, towers and antennae and other such infrastructure in the interests of visual amenity and the protection of sensitive landscapes, subject to radio and engineering parameters.
- EC POL 37: To encourage co-location of antennae on existing support structures.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The appeal is a first party appeal, seeking the removal of Condition 6 of the planning authority's decision which requires the installation to be inspected and monitored at yearly intervals without prior notice by a competent authority.

6.1.2. The issues raised in the appeal can be summarised as follows:

- Condition 6 is outside of the remit of the Local Authority and is vague and onerous.
- Wording of Condition 6 is ambiguous and all Ministerial Guidelines and recommendations have advised against applying such monitoring conditions.
- In case PL17.236811 the Inspector's Report noted that the Board has consistently taken the view that based on the information available there is no conclusive evidence of adverse health effects from mobile phone masts. Inspector considered it acceptable to attach a condition relating to the ICNIRP compliance but highlighted that it was inappropriate to deal with matters which are the subject of other controls.



- In this case, the Planning Authority's decision conditioned compliance with the ICNIRP Guidelines but also attached condition 6, which the applicant believes is subject to the control of ComReg.
- ComReg is the statutory body responsible for the regulation and monitoring of the electronic communications and postal sectors. Monitoring arrangements are regulated by ComReg and are not to be additionally regulated by the planning departments of Local Authorities.
- Section 4.6 of the 1996 Guidelines outlines how the statutory body was being set up to regulate monitoring and how Local Authorities should not include monitoring conditions.
- The inclusion of Condition 6 and its reasoning being in the 'interest of public health' shows that the Local Authority are encroaching into an area they are unqualified to assess and are seeking to regulate the area already under the direct control of ComReg.

## **6.2. Planning Authority Response**

- 6.2.1. The Planning Authority is satisfied that all matters outlined in the appeal were considered in the course of its assessment.

## **6.3. Observations**

- 6.3.1. None received.

## **7.0 Assessment**

### **7.1. Nature of Appeal**

- 7.1.1. Having regard to the circumstances of this case, including the planning history, site context, lack of third party involvement, and to the nature of the condition under appeal, I am satisfied that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted. I consider, therefore, that the appeal should be dealt with in accordance with Section 139 of the Planning and Development Act 2000 (as amended).

### **7.2. Condition 6**

- 7.2.1. Condition 6 requires the installation to be inspected and monitored at yearly intervals by a competent authority using standardised measurement procedures and survey techniques, for the stated reason of public health interests. The Planning Officer's report and the Planning Authority's response to the appeal do not contain any explanation or rationale for the inclusion of this Condition and I note that neither the original grant of permission for the structure (Reg. Ref. KA/901199) nor the subsequent 5-year permission (ABP Ref. PL17.240975, Reg. Ref. KA/120478) included a similar condition.
- 7.2.2. As noted by the applicant, the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities 1996 and the subsequent Circular Letter PL07/12 clearly and unambiguously advise that planning authorities should not include monitoring arrangements as part of planning permission conditions. The Circular Letter also advises that planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and that they do not have competence regarding health and safety matters in respect of telecommunications infrastructure. It advises that such matters are instead regulated

by other codes and should not be additionally regulated by the planning process. This is reiterated in the Development Management Guidelines for Planning Authorities 2007 which notes that it is inappropriate to deal with matters which are the subject of other controls unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be dealt with effectively by other means.

- 7.2.3. The proposed development relates to the continuance of use of a relatively long established telecommunications support structure and the addition of antennae, dishes and other equipment. It has been established through the planning process on a number of occasions that the appeal site is a suitable location for such a structure. Having regard to this and national and local policy for telecommunications structures, I do not consider that any particular circumstances arise in this case that would require annual monitoring arrangements by way of condition.
- 7.2.4. In attaching a condition that seeks to establish a system of independent inspection and monitoring, I consider that the Planning Authority is attempting to exercise functions that are the subject of specific controls under other regulations/legislation and which are the responsibility of the Commission for Communications Regulation (ComReg), which is the licensing authority for telecommunications in Ireland. In so doing, the Planning Authority is addressing matters which are subject to other controls and there are no particular circumstances evident that merit the attachment of such a condition.
- 7.2.5. I note that Condition 2 requires compliance with the public exposure limits of the International Commission of Non-Ionising Radiation Protection (ICNIRP) Guidelines and European Pre-standard ENV50166-2. This condition is consistent with the health and safety guidance set out in Section 4.6 of the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities 1996 and I consider it to be sufficient for the purposes of the planning process.

7.2.6. In conclusion, I therefore consider that there is no clear basis for imposing Condition 6, that it duplicates other regulations/legislation, and that it is contrary to the guidance set out in the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities 1996 and the associated Circular Letter PL07/12. I therefore consider Condition 6 to be inappropriate and unnecessary and I recommend that the Planning Authority be directed to remove the said Condition.

### **7.3. Appropriate Assessment**

7.3.1. Having regard to the nature and scale of the proposed development, which relates to the continuance of use of a long-established structure previously permitted on a temporary basis, the nature of the receiving environment and the proximity to the nearest European sites, I am satisfied that 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, 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, based on the reasons and considerations set out below, directs the Planning Authority under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended, to REMOVE Condition 6.

## **9.0 REASONS AND CONSIDERATIONS**

9.1. Having regard to:

(a) the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities 1996 and the amending Circular Letter PL07/12;

(b) The Development Management Guidelines for Planning Authorities, 2007;  
and

(c) the provisions of the Meath County Development Plan 2013-2019;

the Board considers that the matters to be regulated by Condition 6 are the responsibility of another regulatory authority (the Commission for Communications Regulation) and, as such, it is considered that the attaching of this condition to a grant of permission is not necessary or justified in this case and would be inappropriate.

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Niall Haverty

Planning Inspector

25<sup>th</sup> August 2017