



An  
Bord  
Pleanála

## Inspector's Report ABP-300102-17

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<b>Development</b>	To construct a 21m high telecommunications monopole support structure carrying shrouded antennas and transmission dish, with associated equipment units and security fencing.
<b>Location</b>	Kilcullen Mart, Newbridge Road, Kilcullen, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	17/919
<b>Applicant(s)</b>	Three Ireland (Hutchinson) Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	1 <sup>st</sup> Party
<b>Appellant(s)</b>	Three Ireland (Hutchinson) Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	15 <sup>th</sup> March 2018
<b>Inspector</b>	Michael Dillon

## 1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.022ha, is located within the premises of Leinster Marts – immediately to the west of Kilcullen village centre. The site is stated to be 57m OD, and is located immediately to the rear (northwest) of mart buildings, within a water-logged grass field. There are mobile telephony antennae mounted at two locations on the roof of the adjoining mart building. The equipment container serving these antennae is located immediately to the southwest of the mart building – screened within a clump of boundary trees, and painted green. There is an over-ground rainwater harvesting tank within the proposed site – and an underground slatted tank immediately to the northwest.
- 1.2. Access to the mart site is from the R413 Regional Road – at a point where the 50kph speed restriction is in place. The Cross & Passion College and St, Brigid’s National School are located on the opposite side of this road. The applicant has a leasehold interest in the site.

## 2.0 Proposed Development

- 2.1. Permission sought on 16<sup>th</sup> August 2017, to erect an 18m high monopole with one 0.3m diameter dish and three no. 2.0m high antennae erected at the top (+3m height). An equipment cabinet will be located at ground level just outside the 25m<sup>2</sup> palisade fencing compound. The fencing will be 3.0m high. The proposal is a direct replacement for existing Three Ireland (Hutchinson) Ltd. facilities on the roof of the mart building (erected under Class 31(k) of the exempted development provisions of the Planning and Development Regulations, 2001, as amended). The existing facilities will be decommissioned on construction of the new monopole.
  - 2.1.1. The application is accompanied by the following
    - Letter from the site owner, Leinster Co-Op Marts, indicating that it is its intention to remain on this site, and that it has no plans for re-development in the medium-term.
    - Series of six colour photomontages.
    - RF Technical Justification Report – dated 3<sup>rd</sup> August 2017.

### 3.0 Planning Authority Decision

By Order dated 10<sup>th</sup> October 2017, Kildare County Council issued a Notification of decision to refuse planning permission for one reason as follows-

The proposed development is located approximately 100 metres to the north of an existing school site and is within the town centre of Kilcullen, on lands where a detailed Urban Design Brief has been prepared in the Kilcullen Local Area Plan 2014 (Section 6.5.4.1 : Expansion Area – The mart and adjoining lands). Furthermore, Section 8.13 of the Kildare County Development Plan 2017-2023 states that *“in larger towns communications providers should endeavour to locate infrastructure in industrial estates or on industrial zoned land. Only as a last resort when all other alternatives have been exhausted should free standing masts be located in residential areas or close to schools and hospitals”*. It is considered that the proposed development would seriously injure the visual and residential amenities of the area, would prejudice the expansion and re-development of the Mart and adjoining lands, lead to an undesirable precedent for similar developments and would be contrary to the provisions of the Kildare County Development Plan 2017-2023 and the Kilcullen Local Area Plan 2014-2020 and would therefore be contrary to the proper planning and sustainable development of the area.

### 4.0 Planning History

No recent relevant planning applications.

### 5.0 Policy Context

#### 5.1. Development Plan

- 5.1.1. The relevant document is the Kildare County Development Plan 2017-2023. Section 8.13 of the Plan deals with telecommunications infrastructure. Policy TL 2 states that when evaluating planning applications for the provision of such infrastructural installations, the Council will seek to ensure that- “

“Only as a last resort will masts be permitted within or in the immediate surrounds of smaller towns or villages, in a residential area or near a school, hospital or

residential care home. If such a location should become necessary, sites already developed for utilities should be considered and masts and antennae should be designed and adapted for specific locations. The support structure should be kept to the minimum height consistent with effective operation. At such locations the support structure should be monopole or poles rather than a latticed tripod or square structure”.

“In the vicinity of larger towns, to encourage operators to located in industrial estates or on industrially zoned land”.

- 5.1.2. The Kilcullen Local Area Plan 2014-2020, zones the site “A-Town Centre” use – “To provide for the development and improvement of appropriate town centre uses including retail, commercial, office, residential, amenity and civic use”. Utility structures are ‘Open for consideration’ within this zoning.

Section 6.5.4 indicates that the site is located within an “expansion area”. An indicative design brief shows how the mart and adjoining lands could potentially be developed in the future.

## 5.2. **Natural Heritage Designations**

The site is neither within nor immediately abutting any natural heritage designations.

## 5.3. **Telecommunications Guidelines**

The aim of the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities”, 1996 is to offer general guidance on planning issues so that environmental impact is minimised, and a consistent approach is adopted by the various planning authorities. Section 4.3 states with respect to Visual Impact: Some masts will remain quite noticeable in spite of the best precautions. The following considerations may need to be taken into account:

- 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 or prospect
- There will be local factors which have to be taken into account in determining the extent to which an object is noticeable or intrusive – intermediate objects (buildings or trees), topography, the scale of the object in the wider landscape, the multiplicity of other objects in the wider panorama, the position of the object with respect to the skyline, weather and lighting conditions, etc.

## **6.0 The Appeal**

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

6.1.1. The appeal from Three Ireland (Hutchinson) Ltd, received by An Bord Pleanála on 3<sup>rd</sup> November 2017, can be summarised in bullet point format as follows-

- The development will not injure the visual or residential amenities of the area. The site benefits from screening provided by existing buildings and mature boundary hedges/trees. It will be visible from some points within the village – but will not have a significant impact due to slender design.
- The closest residential building is 95m from the monopole – no. 2 Convent View. There are no standards for minimum distances from houses in any of the relevant Development Plans or national guidance in relation to telecommunications structures.
- Utility structures are ‘open for consideration’ under the zoning, within the Kilcullen Local Area Plan.
- The site is 100m to the north of the closest school. There are no standards for minimum distanced from schools in any of the relevant Development Plans or national guidance in relation to telecommunications structures.

- The applicant has submitted an ICNIRP certificate, and the base station will operate within the licenced Comreg limits for non-ionising radiation. Health issues are governed by other codes, outside of the planning code.
- There were no objections to the proposal from internal KCC departments or from prescribed bodies.
- The proposal would not prejudice the development and expansion of the mart site. The design brief included in the Kilcullen Local Area Plan is just an indication of how the mart site and adjoining lands might be developed in the future. The site is small – within a wider identified expansion area of 6.6ha. The proposal could easily be incorporated into a future design of the mart site.
- The PA has failed to have regard to the benefits this development will bring for mobile telephone customers and broadband users.
- The applicant has already submitted a technical justification for the development. The proposal is a direct replacement for an existing facility on the roof of a mart building. This was erected in 2002 under exempted development provisions (Class 31(k)). At 8.4m above the ground, it is not of sufficient height to provide the necessary coverage in Kilcullen – a clear line-of-sight being required to another base station.
- National and local policy documents acknowledge the necessity for improved broadband connection.
- There are no industrial or commercial zoned lands within the search area – with buildings generally ranging from two to three storeys. Every reasonable alternative was examined to find another suitable site.

6.1.2. The submission is accompanied by colour photographs of other base stations in the immediate area – together with documentation already submitted with the application to KCC.

## 6.2. Planning Authority Response

The response of Kildare County Council, received by An Bord Pleanála on 1<sup>st</sup> December 2017, indicated that there was no further comment to make.

### 6.3. **Observations**

None received.

## 7.0 **Assessment**

### 7.1. **Development Plan Considerations**

- 7.1.1. The zoning of the site in the Kilcullen LAP provides that utility structures are 'Open for consideration' within the town centre zoning. The County Development Plan seeks to discourage telecommunications masts in smaller towns and villages or in a residential area or near schools or hospitals. Whilst there are two schools on the opposite side of the R413, the site is located within mart buildings, which are of the nature of an industrial/commercial use. Operators are encouraged to locate within industrial estates in the vicinity of larger towns. The applicant states that there are no industrial estates within Kilcullen. Alternative telecommunications sites in the vicinity of the town have been examined and found to be wanting, either by way of location or structure.
- 7.1.2. The Council contends that as the mart site has been identified as an expansion area for residential development – and an indicative design brief produced – that it would be inappropriate to grant permission for a mast which might compromise the future development potential of the site for housing. The owner of the mart has indicated that it has no intention in the medium-term to abandon the mart use and to redevelop the site – this being the only mart in Co. Kildare.
- 7.1.3. National guidance in relation to location of telecommunications support structures does not contain any minimum separation distances from houses, schools or hospitals. Indeed, exempted development provisions allow for location of telecommunications apparatus in certain locations without the need for planning permission. I note that the existing telecommunications infrastructure already on the mart site was erected under exempted development provisions. I would be satisfied that the proposed development would not be contrary to the zoning provisions of the current development plan for the area and would not be detrimental to the residential amenities of the area.

## 7.2. Design & Layout

- 7.2.1. There are already telecommunications antennae mounted on the roof of a mart building. The proposed development will result in replacement of these antennae – albeit at a higher level, and on a monopole. A monopole is preferred to a lattice construction – as outlined in the Development Plan. The monopole will be partly screened by the existing adjoining mart building, as will be infrastructure at its base. It is located a sufficient distance from the road so as not to draw attention in visual terms. Having regard to the replacement nature of the application, I would see no difficulty on either visual or locational grounds.

## 7.3. Other Issues

### 7.3.1. Financial Contribution & Bonds

The applicant refers to the revised “Telecommunications Antennas and Support Structure Guidelines” (and the accompanying Circular Letter PL 07/12) – issued by the Department of Environment, Community and Local Government in October 2012, to argue that bonds for removal of unwanted structures are no longer appropriate. The applicant refers to Draft Guidelines on Development Contributions 2012, to argue that Development Contribution Schemes must include waivers for broadband infrastructure provision, and that these should be applied consistently across all local authorities. The PA, in this instance, issued a Notification of decision to refuse planning permission – so there was no condition attached relating to payment of a development contribution. The Kildare County Council Development Contribution Scheme 2011-2018, was adopted on 7<sup>th</sup> September 2011. The Scheme indicates that a charge of €10,000 will be applied to each mast, with a 10% reduction for masts which are appropriately screened, and a 10% reduction were the PA is satisfied that the mast is more than 1km from any institutional building. There are no exemptions provided for. I note that the applicant claims that the existing communications facilities on the roof of mart buildings, which the proposed mast is to replace, were erected under the exempted development provisions of the Planning and Development Regulations, 2001 (as amended). Therefore, no development contribution has been previously paid to KCC. A condition requiring payment of a development contribution, in accordance with the relevant Development Contribution



Scheme, should be attached to any grant of planning permission which might issue from the Board. There is no need for a bond condition in relation to this mast. The mast is located on a site belonging to a third party. A condition should be attached to any grant of planning permission, requiring removal when the mast is no longer required.

#### 7.3.2. Archaeology

There is no indication of archaeological remains within the vicinity of the site. The site is a small one. The site is located immediately adjacent to existing mart buildings. I would be satisfied that there will be archaeological implications arising from this development.

#### 7.3.3. Appropriate Assessment

The site is located neither within nor immediately abutting any European site. The area of site is small. I would be satisfied that having regard to the limited area of the site, the nature of the development and 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 any European site.

#### 7.3.4. Health & Safety

The application is accompanied by a letter from Three (dated 11<sup>th</sup> August 2017), to state that the proposed base station will only utilise frequency bands as licensed by Comreg, and causes no risk to external interference or to other licensed frequency band usage. All H3G base stations also comply with the International Commission on Non-Ionising Radiation Protection (ICNIRP) Guidelines. All base stations comply with limits set on electro-magnetic frequency exposure. Comreg carries out random testing of sites to ensure that all base stations are transmitting below the limits defined by ICNIRP.

#### 7.3.5. Temporary Permission

Circular Letter PL 07/12, which accompanied the “Telecommunications Antennas and Support Structure Guidelines” – issued by the Department of Environment, Community and Local Government in October 2012, recommends against the imposition of temporary permissions in relation to telecommunications structures.

There are no good reasons to depart from such advice in the instance of this planning appeal, and any permission issuing from the Board, should be permanent in nature. A condition should be attached to any grant of permission, requiring removal of the monopole and associated equipment, when no longer required.

## 8.0 Recommendation

8.1. I recommend that permission be granted for the reasons and considerations set out below, and subject to the attached conditions.

## 9.0 Reasons and Considerations

Having regard to:

- a) National strategy regarding the improvement of mobile communications services and the *Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, 1996*, issued by the Department of the Environment and Local Government;
- b) The location of the proposed development within an existing mart site;
- c) The presence of telecommunications equipment within the mart site;
- d) The general topography and landscape features in the vicinity of the site;
- e) The separation distance and landscaping between it and residential development; and
- f) The existing pattern of development in the vicinity;

it is considered that subject to the attached Conditions, the proposed development would not seriously injure the amenities of property in the vicinity, and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.

**Reason:** In the interest of public health.

3. Details of the proposed colour scheme for the telecommunications structure, ancillary structures and fencing shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of the visual amenities of the area.

4. The existing telecommunications antennae mounted on the adjoining mart building shall be permanently removed upon commissioning of the new monopole support structure and associated antennae.

**Reason:** In the interest of orderly development and visual amenity.

5. When no longer required, the monopole and associated equipment/compound shall be permanently removed from the site.

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

6. 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 prior to commencement of development 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.

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**Michael Dillon,  
Planning Inspectorate**

**26<sup>th</sup> March 2018.**