



An  
Bord  
Pleanála

## Inspector's Report ABP-300118-17

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<b>Development</b>	Construction of a 40m structure, carrying telecommunications equipment enclosed with palisade fencing and access gate. Retention of exchange containers and 80m access track.
<b>Location</b>	Letteragh Townland, Ben Dash, Kilmaley, Co. Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	P17/631
<b>Applicant(s)</b>	Cellcom Ireland Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	
<b>Type of Appeal</b>	(1) First Party (2) & (3) Third Party
<b>Appellant(s)</b>	(1) Cellcom Ltd (2) Towercom Ltd. (3) Kevin O Connor
<b>Date of Site Inspection</b>	18 <sup>th</sup> February 2018.
<b>Inspector</b>	Brid Maxwell

## 1.0 **Site Location and Description**

1.1 The appeal site which has a stated area of 0.0323 hectares is located in a remote upland area approximately 4km to the southwest of Kilmaley County Clare on the Shoulder of Ben Dash. This upland feature (267 metres OD) is approximately 15 kilometres south-west of Ennis and within 10 kilometres south-east of the more extensive and prominent Slieve Callan (391 metres OD). Ben Dash is characterised by extensive afforestation interspersed with cultivated land with a sparse pattern of residential development. The main public road in the area is that running west from Kilmaley to Kilmihil R484 and to the south is the N68 Ennis to Kilrush. The Mid Clare Way, a way marked walking route traverses the area by way of public roads and private / forestry tracks. The appeal site is occupied by an existing telecommunications mast (37.5m in height on a concrete foundation) with exchange containers and is accessed by way of a surfaced access track extending from a forestry road. There are two further masts one owned by Towercom approximately 500m to the southwest of the site and a mast owned by Hibernian approximately 70m to the southwest of the site. There is an agricultural building approximately 70m east of the site.

## 2.0 **Proposed Development**

- 2.1. The proposal involves permission to install a 40m free standing multi-user structure, carrying telecommunications equipment together with associated exchange containers enclosed with palisade fencing and access gate. Retention permission is sought for the existing exchange containers and the 80m access track. The proposed tower is a replacement for the existing structure which will be decommissioned and removed from site. The in-situ telecommunications equipment is to be transferred post construction. The development will continue to accommodate local broadband, FM Radio, security and Council Services and is intended to provide for future co-location as required.
- 2.2. The application is accompanied by a range of documents including a photomontage document which enables assessment of the visual impact on the structure from twenty vantage points within a 5km radius.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

By order dated 15/8/2017 Clare County Council decided to grant permission and 5 conditions were attached including.

Condition 4. Structure to be made available for third party co-location.

Condition 5. Development Contribution of €17,242.46 to be paid in accordance with the Council's development contribution scheme.

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

##### 3.2.1. Planning Reports

Notes that there is no history of permission on the site however the site and access track are visible on the 2005 OS Aerial photography. Notes permission 12/334 PL03.239035 accepted that an additional mast would be acceptable at this location. Permission was recommended subject to conditions.

#### 3.3. **Third Party Observations**

3.3.1 Submission by Kevin O Connor objects to development on grounds of negative visual impact.

3.3.2 Submission from Towercom Ltd. objects to the development and asserts that the existing 42m high Towercom structure within 0.5km of the proposed structure has capacity to accommodate additional radio antennae. No effort made to collocate to existing structure. Proposal will result in proliferation of structures and undermine the principle of co-location.

### 4.0 **Planning History**

None on the appeal site.

**P187** Concurrent application currently before Clare County Council (decision due date 6/3/2018) for permission for retention of the existing 42m high

telecommunications support structure carrying transmission equipment and ground based equipment all enclosed in security fencing

**94/121** Permission granted to Telecom Eireann for 43.5m high mast a single storey radio repeater building. Mast is 400m southwest of the appeal site.

**PL03.239035 10/1060** Permission granted to Hibernian Cellular Networks Ltd. to replace existing telecommunications support structure with a 41m multi operator tower carrying telecommunications equipment associated equipment shelter, associated equipment cabin, 2.5m high security fence and access track.

**12/3334** Permission granted to Hibernian Cellular for revised tower design consisting of reduced height of 40m, including reduced base width of 338m to replace previously granted structure 239035. Associated telecommunications equipment, associated equipment shelter associated equipment cabin, 2.5m high security fence and access track. Permissions expired 29/9/2016.

There have been a number of wind energy development proposals in the area including permission for the following:

**239933** 10 years granted no 21/2/2013 for 6 no. wind turbines, 1 no. permanent meteorological mast, electricity substation and associated site works. 1km to the west.

**244095** 10-year permission for extension to Boolynagleragh Windfarm to include 7 turbines and all ancillary works. Site within .6km to the southeast of the appeal site.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The Clare County Development Plan 2017-2023 refers.

**It is an objective of the Development Plan: CDP 8 .44** To facilitate the provision of telecommunications services at appropriate locations within the County having regard to the DoEHLG 'Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities 1996 (as updated by PL07/12 of 2012)'.

**It is an objective of the Development Plan CDP10.6** To advocate for, and facilitate the extension of broadband infrastructure throughout the County and encourage e-commerce and IT telecommunications in support of rural enterprise.

The site lies within an area designated as Settled Landscape where the objective is “To permit development in areas designated as ‘settled landscapes’ that sustain and enhance quality of life and residential amenity and promote economic activity subject to:

- Conformity with all other relevant provisions of the Plan and the availability and protection of resources;
- Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts;
- Regard being given to avoiding intrusions on scenic routes and on ridges or shorelines.

Developments in these areas will be required to demonstrate:

- That the site has been selected to avoid visually prominent locations;
- That the site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads;
- That design for buildings and structures reduce visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.

## 5.2. Natural Heritage Designations

5.2.1 There are no specific designations on the appeal site. I note the following designated sites within 15km:

- Lough Maninna Bog NHA Site Code 002367 3km to west
- Lough Acrow Bogs NHA Site Code 002421 1.2km south of the site.
- Pouladatig Cave SAC Site Code 000037 circa 9.5km to the northeast of the site.
- Newhall and Edenvale Complex SAC Site Code 0002091 c 10km east.

- Ballyallia Lough SAC Site Code 000014 circa 14km to northeast
- Ballyalla Lough SPA Site Code 0004041 circa 14km northeast.
- River Shannon and River Fergus Estuaries SPA Site Code 004077 circa 11km southeast
- Lower River Shannon SAC Site Code 002165 11km southeast.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The first third party appeal is submitted by Kevin O Connor, Hardingrove, Bruree Co Limerick. Grounds of appeal are summarised as follows:

- No requirement for mast given that capacity is available on adjacent existing mast.
- Current mast on site is an eyesore and refusal is warranted on grounds of negative visual impact.

6.1.2 The second third party appeal is submitted by Towercom, owners of the telecommunications structure located approximately 500m southeast of the proposed structure. Grounds of appeal are summarised as follows:

- Towercom's structure is 42m in height and is the established telecommunications structure for the area with excess capacity to accommodate additional radio antennae.
- No attempt has been made to co-locate or utilise capacity of the existing structures
- Proposal will result in a proliferation of masts.
- Undesirable precedent of granting permission on the site of an unauthorised structure.
- The capacity available on Towercom structure post upgrade will be more than 50% the entire capacity of the structure being applied for.

6.1.3 The first party appeal relates to condition 5 requiring payment of a development contribution. The grounds of appeal are submitted by CMC Planning Consultants and are summarised as follows:

- Council has failed to properly apply the terms of the scheme.
- Development Contribution is inappropriate as the Class 8 exemption built into the scheme applies.
- Application is for a new mast and relates to the provision of broadband.
- Acknowledge that in addition to broadband the proposed infrastructure will accommodate localised radio, security and council services however there are no restrictions or limitations in the wording of the scheme, thus full waiver should apply.
- While in situ structures are acknowledged and redevelopment of the site attracts contributions, there is nothing in the scheme that prevents reliance on the class 8 exemption for new infrastructure within a redevelopment proposal. Similarly, there is no means by which the Authority could apply the terms of a contribution scheme retrospectively to the existing mast development without a specific condition relating to grant or at all if unauthorised.
- The imposition of contributions to development of this nature has been acknowledged to be counter productive and an inhibitor to the implementation of State and EU policies relating to the roll out of high speed broadband services nationwide by 2020.

## 6.2. Applicant Response

The first party response to the two third party appeals is summarised as follows:

- In relation to appeal by Towercom, it could be viewed that appeal is a deliberate attempt to gain competitive advantage in the area by delaying or halting Celcom's development.

- Available accommodation on Towercom structure is generally on the lower sections of the 42m structure and issues of frequency clashes with existing equipment also arise.
- Note no timeframe given for enhancement of Towercom structure.
- Capacity calculations are guestimates at best and no evidence or structural analysis is provided to support the claim.
- Testimony from existing operators (appended to the appeal) indicates that Towercom infrastructure is not viable for operator's network requirements.
- Planning status of the Hibernian structure is uncertain.
- Application should be assessed on its merit.
- Cellcom's infrastructure has been established in Ben Dash since the 1970s predating Towercom structure by 20 years and has continuously operated as a co-location facility overtime.
- A low visual impact arises whilst making a positive imprint on services and amenity locally in terms of the health and safety benefits of good telecoms services.

### 6.3. Planning Authority Responses

The Planning Authority responses to the two third party and the first party appeal asserts that:

- Issues raised in the appeals were considered in the assessment of the application.
- The inclusion of the development contribution is warranted as the mast hosts a range of types of telecommunications equipment in addition to broadband.
- The Clare County Council Development Contribution Scheme 2017-2023 establishes that a €17,000 contribution per telecommunications mast is to be levied. It relates to "*all free standing telecommunications support structures including those in place for telephone, radio, TV*". There is an exemption for Broadband listed in Table 2 of the Scheme, described as "New Telecommunications Masts and Antennae that provide for Broadband,"



Having regard to the development description which stated that “*the development will continue to accommodate Local Broadband, FM Radio, Security and Council Services*”, the Planning Authority concluded that the proposed mast did not solely cater for broadband and that it therefore did not comply with the terms of the exemption.” It is further noted that there is no Planning History associated with the existing mast on site which is to be decommissioned as part of the development.

- Clare County Council respectfully requests An Bord Pleanála to uphold the Council’s decision in this instance.

## 7.0 **Assessment**

7.1 Having reviewed the grounds of appeal I consider that it is appropriate to address the appeal under the following broad headings.

- Principle of development
- Visual impact and impact on the amenities of the area
- Appropriate Assessment
- First Party Appeal of Condition 5

## 7.2 **Principle of Development**

7.2.1 Having regard to the location of the site in an area outside any scenic designation, and to the planning history of the area including the establishment of existing and permitted telecommunications structures, and to the policies within the development plan which promote the provision of telecommunications infrastructures, it is considered that the development of a telecommunications mast at the site should be considered to be acceptable in principle subject to detailed proper planning and sustainable development considerations. As regards third party allegations that favourable consideration might set an undesirable precedent with regard to the

unauthorised nature of existing structures on the site, I do not consider that any such precedent would arise and I consider it appropriate that the development as set out be assessed on its merit. As regards issues raised with respect to the need for the mast and contention of the availability of adequate capacity on the adjacent Towercom structure, I note the submission of the first party and as supported in submissions of existing operators which outline that the adjacent structure is not viable for the operators' network requirements. Whilst I cannot verify the technical circumstances in this regard I consider that the evidence provided is compelling and therefore I consider that the need for the structure has been demonstrated.

### **7.3 Visual impact and impact on the amenities of the area**

7.3.1 As regards the visual impact of the proposed structure, which is readily projected by analysis of the existing structure, whilst the structure will be locally prominent it is not likely to be dominant within the landscape and the landscape is considered to be significantly robust to accommodate this type of development. I note that the landscape character and plantation growth in the vicinity serves to mitigate the visual impact of the structures. As regards impact on the of the mid Clare way walking route I consider that the structure does not result in any diminution of the recreational experience and such modern infrastructural features are common in the landscape and indeed may provide somewhat of a landmark feature to walkers and certain sense of comfort in terms of telecom connectivity. I note that the robustness of the landscape has been acknowledged by previous decisions of the Board in relation to telecom masts (239035) and wind energy proposals 239933 and 244095.

### **7.4 Appropriate Assessment**

7.4.1 As regards Appropriate Assessment having regard to the nature and scale of the proposed development and to the nature of the receiving environment and proximity to the nearest European Site, 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.

## 7.5 First Party Appeal of Condition 5.

7.5.1 The first party appeal is against a financial contribution condition applied under the Clare County Council Development Contribution Scheme 2017-2023. The Board's remit in appeals against financial contribution conditions is restricted to the proper application of the adopted scheme.

7.5.2 Condition 5 is as follows:

*“Prior to the commencement of development, the developer shall pay a contribution of €17,242.46 to Clare County Council (Planning Authority) in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority that is provided for 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 as amended. The contribution shall be paid prior to commencement of development. At the time of payment, the contribution will be subject to any applicable adjustment in accordance with the relevant provisions of the Planning Authority's Development Contribution Scheme in place at the time of payment. Any contributions owing post commencement of development may be subject to interest penalties.*

*Reason: It is considered appropriate that the developer should contribute towards the cost of public infrastructure and facilities benefitting the development as provided for in the Council's prevailing Development Contribution Scheme made in accordance with Section 48 of the Planning and Development Act 2000 as amended, and that the level of contribution payable should be adjusted at a rate in the manner specified in that scheme.”*

7.5.3 The Clare County Council Development Contribution Scheme 2017-2023 was adopted on the 24th April 2017 effective from that date and was made under Section 48 of the 2000 Act. The levels of contributions payable for telecommunications masts are set out at Table 1 Other Non Residential Development, page 7, with the contribution payable being €17,000 per mast. I note the wording in relation to telecommunications masts as follows:

**“Telecommunications Mast**

**€17,000 per mast**

*Relates to all free-standing telecommunications support structures, including those in place for Telephone, Radio, TV.  
(See exemption for Broadband – Section (D))*

*The contribution is a once off payment due in respect of each “mast”. Subsequent applications to extend the life of temporary permissions shall not be liable for this contribution unless the existing structure is to be materially altered. The co-location of additional antennae on an existing mast will not be considered to be a material alteration of the structure for the purposes of this scheme.  
Any new buildings associated with the masts and antennae will be charged at the relevant non-residential built development rate.”*

*Table 2 sets out Exemptions at Page 11 whereby Category 8 refers to “New Telecommunications Masts & Antennae that provide for Broadband”.*

7.5.4 The first party makes the case that the development is a new telecommunications masts which provides for broadband and the exemption should therefore apply. Whilst as noted by the Planning Authority in response to the appeal the structure also provides for additional telecommunications structures, the wording of the scheme provides no basis for application of a partial exemption. I would therefore concur with the first party that a reasonable interpretation of the wording of the Development Contribution scheme would conclude that a full waiver is applicable in respect of the telecommunications structure.

7.5.5 As regards the retention of exchange containers and provision of additional cabinets, the scheme provides for the application of the non-residential building development rate to these structures. I calculate the relevant contribution as follows:

Existing Cellcom # 1 Cabinet  $3.164 \times 2.2 = 6.96$

Existing Cellcom #2 Cabinet  $2.02 \times 2.02 = 4.08$

Proposed Future Operator # 1 Cabinet  $1.34 \times .76 = 1.02$

Proposed Future Operator # 1 Cabinet 2no  $.8 \times .76 = 0.61 \times 2 = 1.2$

Proposed Future Operator # 2 Cabinet  $1.3 \times 0.7 = .91$

Proposed Future Operator #3 Cabinet  $1.3 \times 0.7 = .91$

Total Floor area **15.08m<sup>2</sup>**.

Rate €18 per square metre =  $15.08 \times €18 = \mathbf{€271.44}$

## **8.0 RECOMMENDATION**

Grant permission subject to the following conditions for the following reasons and considerations.

## **REASONS AND CONSIDERATIONS**

Having regard to -

(a) the national strategy regarding the improvement of mobile communications services,

(b) 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,

(c) the location of the site outside any heritage landscape or other significant scenic designation in the development plan for the area,

(d) the general pattern of development in the vicinity, and

(e) the planning history of the area,

it is considered that, subject to compliance with the conditions set out below, the development proposed would not seriously injure the amenities of the area, and would be in accordance with the proper planning and sustainable development of the area.

## **CONDITIONS**

1. The development shall be carried out 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. A low intensity fixed red obstacle light shall be fitted as close to the top of the mast as practicable and shall be visible from all angles in azimuth. Details of this light, its location and period of operation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

3. The applicant/developer shall provide and make available, on reasonable terms the proposed mast for the provision of mobile telecommunications antennae/dishes of third-party licensed mobile telecommunications operators.

**Reason:** To avoid unnecessary proliferation of telecommunications structures in the landscape, in the interest of visual amenity.

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

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

5. The developer shall pay to the planning authority a financial contribution of €271.00 (Two hundred and seventy-one euro) in respect of public infrastructure and facilities benefitting 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 – 2015. The contribution shall be paid prior to the 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 – 2015 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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Bríd Maxwell

Planning Inspector

22<sup>th</sup> February 2018