



An
Bord
Pleanála

Inspector's Report ABP-301070-18

Development	Continued use of the existing 25m high free standing lattice communication structure carrying antennae and communication dishes within an existing 2.4 metre high palisade fence and walled compound.
Location	ESB, Clondalkin 38kv Substation, Ninth Lock Road, Clondalkin, Dublin 22
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD17A/0424
Applicant(s)	ESB Telecoms Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	ESB Telecoms Ltd.
Observer(s)	Gerry O'Neill.
Date of Site Inspection	30 th May 2018
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The appeal site is located in Clondalkin town centre on the eastern side of the Ninth Lock Road. The Grand Canal is c.450m due north of the site and the M50 motorway is c.1.3km due east. The Ninth Lock Road becomes Tower Road just south of the appeal site and Clondalkin Round Tower is c.300m south along the same road.
- 1.2. The appeal site and the ESB compound it is located within is directly opposite the Mill shopping centre. An Intreo Government Services centre is located to the south of the site on the same side of the road. There is a mix of uses in the area including residential, retail and commercial.
- 1.3. The site itself comprises an ESB compound surrounded by palisade fencing placed on top of a low wall with an overall height of c.2.4m. Within the ESB compound is an ESB substation and four pylons which are smaller in height than the telecommunications mast. No dimensions for the pylons are provided on the drawings. They are located to the rear of the compound. The telecommunications equipment comprises of the lattice tower mast which is 25m high as well as a telecoms communication building and a cabinet.

2.0 Proposed Development

- 2.1. Permission is sought for the continued use of the existing 25m high lattice tower structure carrying antennae and communication dishes, an associated telecommunications container cabinet, a communication building and palisade fencing.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for one reason:

1. Having regard to the 25 metre height of the subject lattice tower and its prominent location within Clondalkin town centre, it is considered that the continued use of the site for the subject development would seriously injure the visual amenities of this town centre site and of property in the vicinity. The

continued use of the structure would result in a visually unattractive underutilised town centre site, which would be contrary to the proper planning and sustainable development of Clondalkin town centre. The proposed development at this location would also be contrary to the policies and objectives of the South Dublin County Council Development Plan 2016 – 2022 which provides for the enhancement and redevelopment of town centre sites such as Clondalkin.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority's decision. It includes:

- Zoning of the site is 'TC – To protect, improve and provide for the future development of Town Centres'. Notes there has been a mast on the site for many years now and that public services are permitted in principle in this zoning.
- Notes in previous planner's report for Reg. Ref. SD14A/0113 the Planner included a paragraph referring to a the provision of a linear area of green space to the front section of the ESB landholding and considered that a timeframe for the delivery of that greenspace could be requested as a condition of planning.
- Refers to Circular Letter PI07/12 and applicable sections.
- Refers to visual amenity and notes that applicant states that the site is wholly independent of the ESB substation. States that documentation submitted with the application notes that the applicant investigated eight possible alternative sites within the immediate area and that the majority of landowners did not wish to pursue the relocation.
- The mast has been in place for many years but in the intervening years significant redevelopment of the surrounding Clondalkin town centre zoned land has taken place. As was noted in previous planning applications the 25m tower is an unattractive feature along this urban street and locating this long term is unacceptable. It is considered preferable that it is removed.

- The development has been granted retention permission most recently for three years by the Board. It remains the Planning Authority's opinion that granting permission for the permanent location of this tower would not encourage development of the lands.
- It is more suited to an industrial area and should not be located on prime town centre land. It is visually unacceptable and recommends refusal.

The decision is in accordance with the Planner's recommendations.

3.2.2. Other Technical Reports

- **Foul drainage/water** – referred to Irish Water
- **Surface Water drainage** – no objection subject to conditions
- **Roads section** – no objection
- **Parks & Landscaping Services Section** – no report

3.3. Prescribed Bodies

- **Irish Water** - no objection subject to conditions
- **HSE Environmental Officer** - no objection subject to conditions

3.4. Third Party Observations

One objection was received from the observer to the appeal. In summary, it states:

- Mast is visually obtrusive and due to height can never be screened.
- Concerned that one alternative site was rejected by Council.
- Structure is now an unauthorised structure.
- Refers to Guidelines and health concerns.

4.0 Planning History

There is a long planning history on the site. In summary the applications are as follows:

- **ABP PL06S.243666, SDCC SD14A/0113:** Permission was granted by the Board in December 2014 for continued use of the mast. The continued use was permitted for 3 years. The Board noted on the Board Direction that the retention of this structure for an indefinite period would be unacceptable in light of the existing character of the development in the vicinity. The Board accepted that removal of the mast would result in disruption to telephony coverage in the area but considered that the issue amounted to exceptional circumstances for the purposes of Circular PL07/12. The reason for Condition 2, which limited the duration to three years, stated that the condition would facilitate a comprehensive examination of alternative locations and options for the provision of mobile telephony coverage in the area now provided from this structure.
- **SD10A/0097:** Permission to retain the mast was granted in April 2010. Permission was for a period of 5 years.
- **SD05A/0023:** Permission to retain the mast was granted in April 2005. Permission was for a period of 5 years.
- **SD02A/0577:** Permission was granted in January 2003 to retain the mast. It was permitted for two years.
- **ABP PL06S.098071/ SDCC S95A/0521:** Permission was granted by the Board in May 1996 overturning the Council's decision to refuse permission for the 25m mast and equipment. Permission was limited to 5 years.

5.0 Policy Context

5.1. South Dublin County Development Plan 2016 – 2022

Chapter 5 refers to Urban Centres and Retailing and Chapter 7 refers to Infrastructure and Environmental Quality.

- 5.1.1. Chapter 5 identifies Clondalkin as a vibrant Town Centre. A number of *Actions* are listed including '*Protect and enhance infrastructural investment such as public transport and high quality town centre facilities in Tallaght Town Centre and*

Clondalkin Town Centre'. Section 5.1.1 refers to Clondalkin along with Tallaght as a major town centre at the top of the county's hierarchy.

UC2 Objective 2 seeks:

To promote Clondalkin Town Centre as a primary urban centre in the County by directing higher order retail, retail services, residential, cultural, leisure, financial, public administration, restaurants/bars, entertainment and civic uses within and adjoining the Core Retail Area of this centre.

And **UC2 Objective 6** seeks:

To provide a broad range of facilities and services in Tallaght and Clondalkin Town Centres and support the role of these centres as the focus for commercial activity, leisure, entertainment, community activities and public transport.

5.1.2. Figure 5.5 identifies the Core Retail Area for Clondalkin. The subject site lies within the identified core retail area.

5.1.3. Section 5.6.3 specifically refers to Clondalkin. Four specific objectives for the Town Centre are listed and the overall policy is to '*maintain and enhance the Level 3 retailing function of Clondalkin Town Centre*'.

5.1.4. Section 7.4 of the Plan refers to Information and Communications Technology. It is the policy of the Council '*to promote and facilitate the sustainable development of a high quality ICT network throughout the County in order to achieve balanced social and economic development, whilst protecting the amenities of urban and rural areas*'.

IE Objective 4 seeks:

To permit telecommunications antennae and support infrastructure throughout the County, subject to high quality design, the protection of sensitive landscapes and visual amenity.

5.2. **Circular Letter PL07/12 – Telecommunications Antennae and Support Structure Guidelines.**

- 5.2.1. Circular Letter PL 07/12, issued in October 2012 by the Minister for the Environment, Community and Local Government under section 28 of the Planning and Development Acts 2000-2012, updated certain sections of the Guidelines and states in Section 2.2, inter alia,

“Planning authorities are therefore advised that from the date of this Circular Letter, attaching a condition to a permission for telecommunication masts and antennae which limit their life to a set temporary period should cease. Where a renewal of a previously temporary permission is being considered, the planning authority should determine the application on its merits with no time limit being attached to the permission. Only in exceptional circumstances where particular site or environmental conditions apply, should a permission issue with conditions limiting their life.”

5.3. **Natural Heritage Designations**

- Glenasmole Valley SAC (Site code 001209) is c.8.5km south of the site.
- South Dublin Bay SAC (Site Code 000210) is c.12km to the east
- South Dublin Bay and River Tolka SPA (Site Code 004024) is c. 12km to the east
- Rye Water Valley/Carton SAC (Site Code 001398) is c.8km to the north-west

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The first party submitted an appeal against the decision of the Planning Authority to refuse permission. In summary, it states:

- Original permission was granted 21 years ago and has since formed a vital part of the telecommunications infrastructure of Clondalkin and the wider area.

- The structure carries the equipment of three network providers.
- ESB Telecoms carried out a wide search for an alternative location during the summer of 2016. The search could not identify a location that was available and capable of providing the coverage.
- The structure is located on a site which is used for utilities purposes; the site forms part of the ESB electricity network. There are no plans for the existing substation to be retired and as such the site will remain a utilities site for the foreseeable future.
- Consider the subject site conforms with all relevant national planning guidance and the County Development Plan.
- Information provided on how the network works as it is considered essential that the Board understand and appreciate how the coverage affords vital mobile and broadband services.
- Note that eight sites were considered and a map of the sites is provided as part of the appeal. Only one site was available and capable as an alternative – that site was the Mill Shopping Centre. State that at a pre-planning meeting with the Council, the Council advised that the site was not suitable. The search was unable to find an available site capable of providing for the transmission requirements. The search indicates that a Town Centre zoning site is required.
- Consider subject development accords with the Development Plan and the Guidelines.
- ComReg website and attached map indicates that there are few communication structures in the area, which can in part be attributed to the fact that ESB telecoms offer the existing structure which can provide for co-location.

6.2. Planning Authority Response

No response is on file.

6.3. Observations

An observation has been received on the appeal. In summary it states:

- Refers to recent ABP decision ABP Ref. 243666. In this application the Council have agreed with the Board that the continued use would seriously injure visual amenities.
- Statement that no suitable sites are available is not correct – they have stated that the Mill Shopping Centre has agreed to its installation on their site – so there is an alternative. Now state that Council was not happy with that site as it was too close to proposed housing. Consider that there should be more concern for the people currently living next door. Car parking to the rear of the Mill shopping centre will push proposed housing hundreds of yards away from any new structure. The Mill site is available and the mast could be placed in a less visual manner.
- Health concerns with masts addressed – refer to refugee centre and creche in vicinity. There is reference to issues with the ESB compound also.
- Clondalkin village is an ‘exceptional circumstance’. It has expanded its town centre lands into lands which were previously zoned industrial where the ESB substation exists.
- Mast may be within the ESB compound but it is at the edge of the Ninth Lock Road and can never be visually screened as it could be if it was moved to the Mill centre.
- There is nowhere else in Ireland where an industrial location has been transformed into a vibrant residential area and this has created an ‘exceptional circumstance’. Thirty year old legislation cannot be allowed to hinder a vibrant community.
- The area is not an industrial area despite the applicant’s assertions. It is a Town Centre site.
- There are two telecommunication masts in the area - not one as stated by the applicant.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Visual Amenities
- Planning History
- Alternatives
- Appropriate Assessment

7.1. Visual amenities

- 7.1.1. The application for the continued use of the mast was refused permission by the Council for one reason which included reference to the serious injuries to the visual amenities of this town centre site and of property in the vicinity. The reason also referred to the mast resulting in a visually unattractive underutilised town centre site and that it would be contrary to the policies which provide for the enhancement and redevelopment of town centre sites.
- 7.1.2. This site is now part of the Core Retail Area of Clondalkin. The policies for the Core Retail Area include UC2 which seeks to *promote Clondalkin Town Centre as a primary urban centre in the County by directing higher order retail, retail services, residential, cultural, leisure, financial, public administration, restaurants/bars, entertainment and civic uses within and adjoining the Core Retail Area of this centre.*
- 7.1.3. I accept that public services are an acceptable use in principle in this zoning, however I am not satisfied that the location of a 25m mast alongside a main pedestrian and vehicular thoroughfare in Clondalkin is appropriate. This part of Clondalkin is a busy area with typical town centre uses such as the Mill Shopping Centre and an Intreo centre in the immediate vicinity of the site. The mast is visually unattractive and will never be satisfactorily screened due to its height and location. I accept that the ESB substation is unlikely to move, but having regard to the much lower height of the pylons and the location of the substation building in front of the

pylons, I consider that it is possible to suitably screen that infrastructure. As noted by a previous Inspector on an earlier appeal, the mast is an eye-sore.

- 7.1.4. The policies for Clondalkin town centre seek to enhance and redevelop town centre sites – this infrastructure in this location does not accord with those policies.
- 7.1.5. The Clondalkin Round Tower is c.300m directly south of the site along the same stretch of road. A new Heritage Centre has recently been opened with the intent of increasing tourism and understanding of the local heritage. The existence of the mast in this prominent location does not enhance the tourism profile of the area.
- 7.1.6. In conclusion, I consider that the siting of the mast in this particularly prominent location seriously injures the visual amenities of the area and is contrary to the policies and objectives for the town centre.

7.2. **Planning History**

- 7.2.1. I acknowledge that the mast has been in existence for a substantial number of years and it could be argued that the town centre has evolved to include that site. However the planning history indicates that the mast has continually been subject to time limitations.
- 7.2.2. Historically most masts were granted planning permission for a temporary period and this mast is no different. As can be seen from the Planning History (Section 4 above) it has sought permission for continued use/retention on numerous occasions. I fully accept that this is no different to many masts around the country prior to 2012.
- 7.2.3. The Department's Circular PI07/12 specifically sought to prevent permissions being granted with a condition limiting the life of the mast subsequent to its publication in October 2012. The circular specifically advised planning authorities that they were no longer to append conditions limiting the duration of the permission except in 'exceptional circumstances'.
- 7.2.4. I note that since 2012, there has been one planning application which was determined on appeal by the Board for this mast in December 2014. The Board stated on the Board Direction that the retention of this structure for an indefinite period would be unacceptable in light of the existing character of the development in the vicinity. The Board accepted that removal of the mast would result in disruption

to telephony coverage in the area but considered that the issue amounted to exceptional circumstances for the purposes of Circular PL07/12. There have been no changes to policy or zoning since the most recent determination by the Board that could warrant a change to those 'exceptional circumstances'.

- 7.2.5. The Board clearly stated that the 3 year limitation on the life of the mast was to facilitate a comprehensive examination of alternative locations and options for the provision of mobile telephony coverage in the area.
- 7.2.6. In conclusion, whilst I accept that the structure has been in existence for a substantial number of years at this stage, it was always permitted for a limited period only. The last permission granted by the Board was subsequent to the circular PI07/12 being issued which sought to prevent conditions limiting the life of the permission in exceptional circumstances. The Board considered this mast to be an exceptional circumstance. I am satisfied that there has been no change to policy or zoning which would warrant revisiting this case – the exceptional circumstances remain. I do not however consider it appropriate to permit the development subject to another time limit – this has already been provided. As a result, I would recommend to the Board that permission is refused.

7.3. **Alternatives**

- 7.3.1. As stated above, the Board granted permission with a condition limiting the duration of permission to three years. The reason for the permission was in the interests of promoting and achieving the requirements of the Clondalkin Framework Plan 2011 and to facilitate a comprehensive examination of alternative locations.
- 7.3.2. The applicant submits that 8 options were explored but that only one option was feasible. It is stated that the Council at a pre-planning meeting did not consider the alternative suitable. While the details of the alternatives are not a matter before the Board, I am not satisfied that all alternatives have been fully explored. There are many masts in many towns around the country that are more discreetly located, be it to the rear of buildings or on rooftops.
- 7.3.3. I am not satisfied that sufficient alternatives were considered and do not accept this as a reason to grant permission.

7.4. Appropriate Assessment

Having regard to the nature and scale of development proposed 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

I recommend that planning permission should be refused for the reasons and considerations as set out below.

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, and
- (b) Circular PL07/12 issued in October 2012 by the Minister for the Environment, Community and Local Government,
- (c) The South Dublin County Development Plan 2016 – 2022 policies and objectives for the town centre of Clondalkin, and
- (d) the height, scale and prominent location of the development in an area that is zoned for Town Centre uses,

it is considered that the continued use of the development seriously injures the amenities of the area and of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Ciara Kellett

Senior Planning Inspector
30th May 2018