



An
Bord
Pleanála

Inspector's Report ABP-301613-18

Development	Construction of telecommunications infrastructure comprising of: a 42 metre multi-operator lattice tower with antenna and dishes attached, use of existing access.
Location	Mountnugent Upper, Johnswell, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	18/13
Applicant(s)	Signal Infrastructure Ltd.
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Signal Infrastructure Ltd
Observer	Irish Radiophones
Date of Site Inspection	9 th of October 2018.
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The site, 0.2Ha, is located north of Kilkenny City, in an uplands area north of Johnswell village. The land is an agricultural holding, and the site is located on the 330m contour, in the townland of Mount Nugent Upper.
- 1.2. There are expansive views south towards Kilkenny city and a sharp decline south from the position of the subject site.
- 1.3. There are two existing telecommunications masts within walking distance of the subject site, one on a contiguous site to the east, and the other to the south of the site on the opposite side of the farm access road. Access to the subject site is via an existing access lane serving one of the existing masts.

2.0 Proposed Development

- 2.1. The proposed development consists of a 42metre high lattice tower with antenna and dishes, associated equipment, a cabin and cabinets, fencing, and use of an existing access track, already serving an existing mast

3.0 Planning Authority Decision

3.1. Decision

Kilkenny County Council refused the development for two reasons:

1. The location of the 42metres structure located on an elevated site to the north-east of Kilkenny City, taken in conjunction with the existing masts in the vicinity, would lead to a proliferation of masts which would be contrary to the visual amenities of the area.
2. The policy in Kilkenny County Development Plan 2014-2020 is to require documentary evidence as to the non-availability of co-location of antennae on existing support structures, in any area considered to have an excessive concentration.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- Several masts in the immediate area, the planning authority are not satisfied with issues such as co-location, in light of 2No. mast owners in the area, and alternative sites do not appear to be addressed.
- Following a request for further information, the applicant states it is a shared infrastructure provider. The planning system should not be used to hinder competition.
- Eir Mobile has a mast in the area, and if the applicant obtained permission, Eir would decommission its mast and move to the proposed development.
- Applicant has not submitted analysis of co-location with existing structures in the area
- Refusal recommended.

3.2.2. Other Technical Reports

Roads Section : No objection to the proposed development

3.3. **Prescribed Bodies**

The proposal was referred to appropriate Prescribed Bodies by the planning authority.

3.4. **Third Party Observations**

Irish Radiophones:

- Sufficient masts in the area to cater for capacity.
- Additional mast would create a proliferation
- The need has not been demonstrated
- Co-location has not been addressed
- Irish radiophones mast is within 500metres of site and has capacity for co-location.

Community Radio Kilkenny City

- The proximity to an existing mast could render them unable to satisfy a licence obligation under the Broadcasting Authority of Ireland.
- The proposal will interfere with existing links
- No approach has been made regarding co-location
- If the mast fell it would affect the existing mast.

4.0 Planning History

93/ 217

Permission granted on the contiguous site south east for 150 ft mast for Radio Kilkenny.

89/479, 00/1283, 06/726, 12/31 and 17/484

A 25metres lattice tower was permitted to Meteor on a site to the south east along the same access track.

03/996, 04/790, 08/1393 and 13/609

A 61metres telecommunications tower granted to Irish Radio

All 2No. masts are within 610metres of the subject site.

5.0 Policy Context

5.1. National Policy/ Guidelines

5.2. Telecommunications Antennae and Support Structures

Visual Impact

The visual impact is among the more important considerations which have to be taken into account in arriving at a decision on a particular application. In most cases the applicant will only have limited flexibility as regards location, given the constraints arising from radio planning parameters, etc., already referred to.

Sharing Facilities and Clustering

Sharing of installations (antennae support structures) will normally reduce the visual impact on the landscape. The potential for concluding sharing agreements is greatest in the case of new structures when foreseeable technical requirements can be included at the design stage. All applicants will be encouraged to share and will have to satisfy the authority that they have made a reasonable effort to share.

Where the sharing of masts or towers occurs each operator may want separate buildings/cabinets. The matter of sharing is probably best dealt with in pre-planning discussions.

Where it is not possible to share a support structure the applicant should, where possible, be encouraged to share a site or to site adjacently so that masts and antennae may be clustered. On hill tops clustering may not offer any improvement from the point of view of visual intrusion but in urban or suburban areas use of the same structure or building by competing operators will almost always improve the situation.

Support structures used by emergency or other essential services are not suitable for sharing with public mobile telephone services.

5.3 Circular Letter PL07/12

A circular specifying temporary permissions should cease for telecommunications structures, and development contribution schemes must include waivers for broadband infrastructure.

6.0 Guidelines for Planning Authorities

6.1. Development Plan

Kilkenny County Development Plan 2014

There is no zoning for the subject site. It is located in a rural area.

The site is located within Scenic View 13 as per the Kilkenny County Development Plan on LP 1851 and between junctions T6654 and LS5886.

9.4 Telecommunications

The Council recognises the importance of advanced communications infrastructure for an information-based society, and as a key support for business, education and research. The Council will support and facilitate the provision of advanced communication networks and services to the extent required to contribute to national, regional and local competitiveness and attract inward investment. The Council will also encourage the further co-ordinated and focused development and extension of telecommunications infrastructure including broadband connectivity in the county, particularly in the District Towns, as a means of improving economic competitiveness.

9.4.1 Broadband

The implementation of broadband is under the remit of the Department of Communications, Energy and Natural Resources. In 2012, the Department published a national broadband plan entitled “Delivering a Connected Society: A National Broadband Plan for Ireland”¹⁵⁴. This identified high speed broadband connectivity as a core to competitiveness and has set out targets for achieving higher speeds.

Objective:

9J To facilitate the delivery of high quality broadband to the District Towns in the county. Broadband Development Management Standards

- To support the installation of carrier neutral ducting during significant public infrastructure works such as roads, water and sewerage, where feasible.
- To ensure development proposals include the provision of carrier neutral ducting for fibre based data services and in particular broadband services, as appropriate.
- Ensure the provision for development in connection with telecommunications is made in ways which will maximise the use of existing masts and sites so as to limit the impact of development.

9.4.2 Telecommunications Antennae

The Council recognises the importance of a high quality telecommunications service and will seek to achieve a balance between facilitating the provision of telecommunications services in the interests of social and economic progress and sustaining residential amenities and environmental quality.

9.4.2.1 Telecommunications Antennae Development Management Standards

When considering proposals for telecommunications masts, antennae and ancillary equipment, the Council will have regard to the following:

- a) the visual impact of the proposed equipment and access infrastructure on the natural or built environment, particularly in areas of sensitive landscape (See Chapter 8 Heritage) or historic importance;
- b) the potential for co-location of equipment on existing masts; and
- c) Telecommunications Antennae and Support Structures - Guidelines for Planning Authorities 156 and Circular Letter PL 07/12

The Council will discourage proposals for telecommunications masts, antennae and ancillary equipment in the following locations, save in exceptional circumstances where it can be established that there would be no negative impact on the surrounding area and that no other location can be identified which would provide adequate telecommunication cover:

- (i) Highly scenic areas or areas specified as such in the landscape character assessment, such as Mount Brandon and the River Valleys; in such cases the developer shall demonstrate an overriding technical need for the equipment which cannot be met by sharing of existing authorised equipment in the areas and the

equipment is of a scale and is sited, deigned and landscaped in a manner which minimises adverse visual impacts.

(ii) In close proximity to schools, churches, crèches, community buildings, other public and amenity/conservation areas; and,

(iii) In close proximity to residential areas.

In the assessment of individual proposals, the Council will also take the impact on rights of way and walking routes into account.

To avoid proliferation, which could be injurious to visual amenities, the Council will encourage co-location of antennae on existing support structures and 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.

Proposals within the County for telecommunications antennae and support structures must show:

- a) the alternative sites considered and why the alternatives were unsuitable,
- b) the number of existing masts within the County,
- c) the long term plans of the developer in the County and the potential for further masts,
- d) and the plans of other promoters and any prior consultations which the developer may have had with other mast owners.

6.2. Natural Heritage Designations

The following European sites are within a 15km radius of the appeal site.

Site Name	Designation	Site Code	Distance
River Nore	SPA	004233	>15Km W
River Barrow River Nore	SAC	002163	>15KM W

7.0 The Appeal

7.1. Grounds of Appeal

CMC Planning Consultants has taken this appeal on behalf of the applicant. The relevant points raised in the grounds of the appeal area summarised below.

7.2 *Proliferation of telecommunication structures*

There is a thorough Visual Impact Assessment of the proposed structure included with the application. There were 19No. viewpoints assessed, only 7No. demonstrate a degree of impact with the most prominent view 500metres from the site. Most of the views are at a distance and are not overly intrusive on the visual amenities of the area. There is amelioration provided by the forest. The Visual Impact Assessment also took into consideration the existing structures at the location.

The proposed development is not an additional structure, but a replacement of eir's in-situ and under functioning structure. There would appear to have been confusion in the planning authority's assessment regarding the commitment to remove the eir structure, which lead to the planner not taking into consideration the assessment of proliferation of Telcom structures in the area. This may have been caused by the 25metre structure being described as a Meteor structure. To clarify, eir Mobile was previously known as Meteor Mobile Communications.

There are 3No. permitted structures in the area:

93/217 _ Radio Kilkenny: 45metre mast and hut permitted in 1993;

13/609 - Irish Radiophones: retention of 61metre tower

17/484 Meteor Mobile (eir) permission for 25metre structure.

There will be no increase in masts. The Cignal structure will replace eir's permitted structure, moving it from existing location to higher ground beside the Kilkenny Radio mast.

There is a blocking in the network connectivity to the north-east of Mount Nugent, therefore a higher site is required by eir.

7.3 *Co-location Opportunities*

Due to network parameters of individual telecom service providing one structure can provide for all requirements, regardless of capacity. The Guidelines acknowledge this, and also the need for new structures to develop within a cluster. The objections raised by other infrastructure providers were misleading and presented a scenario that the available capacity on their masts was suitable to eir requirements. The two existing masts have been deemed unsuitable because :

Kilkenny Community Radio:-

The mast already accommodates some meteor/ eir equipment in addition to their 25m mast. The KCR structure is considered limited in its ability to provide for additional equipment or future expansion considering the operators Three and Meteor currently need to share equipment on the mast and/ or mounted dishes to equipment cabin. If Cignal had been successful in purchasing the Kilkenny Radio mast, a new application to redevelop the site would have been required. The Kilkenny Radio infrastructure has been in situ since 1990s, and if it was suitable eir would have already transferred its equipment to the existing mast, rather than the current split accommodation situation.

Cignal Infrastructure is built to the highest standards and to national and international standards, and are unlikely to 'fall down'.

The fact that eir have to supplement its existing 25metre mast by putting equipment onto the Kilkenny Radio Mast justifies surrendering its existing infrastructure and moving to a more suitable site.

Irish Radiophones

Again the objector focused on 'space' issue and its capacity of the in-situ IRP tower, but not the structures ability to provide different network requirements.

The existing eir structure is located on an elevation of 297metres, similar to the IRP structure at 308metres, while the proposed relocation site is 330metres. If the IRB mast was considered to be suitable for eir's needs then it would have transferred to the structure.

The reporting planner was misled by emails submitted by the parties, and these should not have influenced the decision. The IRP also attempted to discredit the support provided by Imagine Broadband by making public emails between Image

and IRP. Imagine confirms that it has no plans to remove its equipment from the IRP site and the IRP agent construed that to mean that the Cignal structure was unnecessary. The IRP would have one believe as a landlord it is qualified to determine the network needs of its tenants. Within the Telecom Industry operators locate on various 3rd party structures, in order to bring comprehensive coverage to an area. Eir required use of KCR mast to enhance its network despite having its own structure in the area. Despite the capacity on the IRP structure, accommodating additional equipment on the tower is not as straight forward as IRP would like the authority to believe. Despite the capacity of the IRP structure, accommodating additional equipment on the tower is not as straight forward as IRP would like the authority to believe. Under planning reference 13/609, Condition No. 2 states:

The number, type of antennas and/or dishes and their location on the mast shall be in accordance with the documents submitted on the 23/12/13. Any changes shall require the written approval of the planning authority.

Reason: Visual Amenity.

The plans and particulars with the application did not include in-situ equipment, apparently due to commercial sensitivities. The IRP's agent did include technical for the permitted development which comprised of 0.7m dishes and 1.3m antennae. The eir equipment planned for the transfer to the proposed structure exceeds these dimensions.

It is agreed the IRP structure is visually dominant, considering it has no screening. It is contended the use of the IRP structure would be more visually impactful compared with the Cignal proposal to remove the existing eir structure and relocate alongside another. The IRP should be assessed and ruled out for co-location.

7.4 Development Contributions

If the Board decided to grant the proposed development, it is requested no Development Contribution is attached in compliance with the Kilkenny Development Contribution Scheme. The proposal is part of the National Broadband Plan.

7.5 Planning Authority Response

There was no confusion regarding eir in the assessment of the planning application. No substantive commitment has been made to remove the existing eir structure.

7.6 Observations

Irish Radiophones has made an third party observation on appeal. The following is a summary of the relevant points raised in the submission.

- There are sufficient masts in the area with spare capacity to cater for any additional demand., and the erection of another mast would create and unsustainable proliferation of masts at Mount Nugent.
- There is no enforceable planning guarantee provided or available to the Board to ensure the removal of the Eir/ Meteor mast which was recently the subject of a retention application granted under reference 17/484. Eir/ Meteor are not parties to the appeal, and the Board must consider the description of the proposal in the statutory notices. The applicant does not have sufficient legal interest in the existing eir mast to remove it. A condition cannot be imposed that is unenforceable.
- Eir has stated any decommissioning is strictly to agreeing commercial terms.
- There are three alternative and authorised masts on Mount Nugent suitable for co-location and there is ample space on all three, the appellant claims a speculative fourth mast is required.
- Irish Radiophones are directly engaged with eir regarding accommodating eir on its tower. The appellant is making unsubstantiated claims to counter this argument.
- There is no evidence to support the statement that the appeal site is the optimum location for the proposed development taking into account existing infrastructure. This has been based on a desk top analysis and but no analysis has been produced by the appellant or eir.
- The issue of difference in levels of various masts at Mount Nugent would amount to only 3metres. The IRB mast is 61metres which is 19metres higher than the proposed Cignal mast. The difference in elevation between the two sites is 22metres. There is only an actual difference of 3metres.

- The alleged issue of Imagine and Eir being blocked in several directions from existing authorised masts is not supported by the elevations cited in the appeal. Both operators only supply letters of support. Imagine are longterm users of the IRP mast and have never expressed any coverage concerns regarding the use of their site.
- IRP mast has significant capacity and welcomes potential customers. The tower is established, and additional equipment requires written approval and not planning permission. In addition, there is no precedent where operators located equipment on two adjacent sites, and to do this would make no sense as it would result in the duplication of power supplies, base stations, cable runs, legal agreements, access procedures, etc.
- T
he proposal should be seen as a speculative tower application on a site with no telecommunications history with no firm customer/ user commitments adjacent to multiuser towers which have substantial capacity.

8 Assessment

8.1 The proposed development consists of a new 42m high telecommunications structure at Mount Nugent Upper, in an upland area north of Kilkenny city, just outside of Johnswell village in a rural area. Having visited the site and considered the appeal file, I believe the salient issues to be addressed in this appeal relate to Kilkenny Co. Co.'s two reasons for refusal:

- Proliferation of masts in the area
- Co-location on existing structures.

8.2 The Department of Environment publication from 1996 '*Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities*' remains the relevant guidelines for planning authorities to date. Section 4.3 Visual Impact, is relevant to the current proposal, '*Where there is an existing mast every effort should be made to share it provided the shared mast is not itself unduly obtrusive. If this is the case, clustering may be more acceptable. However, for transmission reasons, clustering on hilltops may not always provide a solution.*' Section 4.5 states '*Sharing*

of installations (antennae support structures) will normally reduce the visual impact on the landscape. The potential for concluding sharing agreements is greatest in the case of new structures when foreseeable technical requirements can be included at the design stage. All applicants will be encouraged to share and will have to satisfy the authority that they have made a reasonable effort to share. Where the sharing of masts or towers occurs each operator may want separate buildings/cabinets.'

8.3 In terms of local planning policy, the current Kilkenny County development Plan states in Chapter 9, it is stated in the plan, along with other development standards, that *'To avoid proliferation, which could be injurious to visual amenities, the Council will encourage co-location of antennae on existing support structures and 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.'*

8.4 Kilkenny Co. Co. considered an additional new mast on Mount Nugent would lead to a proliferation of telecommunication structures which would be contrary to the visual amenities of the area. On appeal and during the course of the planning application, the applicant has claimed that the proposal is not an additional mast but a replacement mast for eir. It is stated on appeal that the existing eir mast located at Mount Nugent Upper is under functioning. The Board should note there are 3No. existing permitted masts at Mount Nugent Upper.

- a) The Kilkenny Community Radio mast permitted in 1993 which is a 45metres structure and hut located contiguous to the proposed mast.
- b) The Irish Radiophones mast located south of the subject site on a lower contour. It is a 61metres mast granted retention in 2013.
- c) The eir (meteor Mobile) mast which is also south of the subject site and this is a 25metres mast granted retention in 2017 under planning registration 17/484.

It is stated on appeal the proposal Signal structure will replace eir's permitted structure moving it from its current location to higher ground alongside the Kilkenny

Community Radio mast. Eir made a submission with the first party appeal which a letter dated 8th of May 2018 stating it supports the proposed development, and subject to agreeing commercial terms, eir would decommission its existing structure, reinstate that land permitted under 17/484, and transfer to the Cignal site. The applicant states there is no ambiguity on this issue, and the fact the current proposal is the replacement of an in situ mast that will be removed, the issue of proliferation of masts in the area does not exist and the reason for refusal should be dismissed.

The applicant is an equipment provider and not a service provider. The statutory notices state the development will consist of:

The construction of telecommunications infrastructure comprising of a 42metres multioperator lattice tower with antenna and dishes attached, associated equipment, cabins and cabinets, fencing, use of existing access and access track and extension of access track.

There is no reference to replacement of the existing eir mast in the statutory notices. The Board cannot impose a condition requiring the removal of the existing eir mast which was only recently granted planning permission, because the applicant has no legal interest in the existing mast, and it does not fall within the site boundaries or the development description of the current planning application and appeal. Therefore, the proposed development is an additional mast at this location.

The question now arises whether the proposed additional mast will result in a proliferation of masts at this location. A comprehensive Visual Impact report was submitted with the planning application, assessing the visual impact of the proposed structure from 19No. viewpoints. I noted on site that the most obvious views of the existing masts are from along the approach road to the farm and access road servicing the existing masts and subject site. Also views from the south west are quite obvious. Views from the north and west are blocked by the hill and forestry backdrop. The landscape is not the subject of any designations or scenic routes in the current development plan. However, the existing masts are very obvious from the local road network, in particular the IRP mast which is very tall and positioned on an exposed landscape. The existing eir mast is the least obtrusive of the three masts, been 25metres high and located on a lower slope with a certain level of screening.

The Kilkenny Community Radio mast is positioned alongside the subject site on higher ground with a forestry backdrop to absorb some of the visual impact. It is not just the masts that need to be taken into consideration during the assessment of the proliferation, but the fencing, dishes and antennae. It has been clearly stated by two of the existing mast owners that there is additional capacity on their masts to accept more antennae and dishes, therefore the full potential visual impact of the existing masts is not currently evident on Mount Nugent. I am not convinced by the arguments presented that there is a need for an additional mast at this location. The applicant and eir state that the proposed site offers superior coverage than the existing eir site, and it is expected the proposed mast will be used by other mobile and broadband providers. Eir's existing mast was granted planning permission in September 2017 under planning reference 17/484. The appeal states the network is blocked to the north east by Mount Nugent itself, and that the two alternative structures on Mount Nugent are unsuitable. These claims are unsubstantiated by the applicant, and in my opinion are somewhat contradicted by the fact that eir along with its existing mast, currently has equipment on the Kilkenny Community Radio mast. The applicant maintains the Kilkenny Community Radio mast is not capable of taking all of eir's equipment otherwise it would have transferred to the structure as opposed to applying for planning permission to retain its own mast in 2017. IRP also claim to be in negotiations with eir regarding for shared facilities. Therefore, if the existing eir mast is substandard, why did eir apply for permission to retain the structure as opposed to relocating or replacing the structure in 2017. In my opinion, given that the overall height difference of the proposed mast would only amount to an additional 3metres above the IRP mast, it makes no planning sense to provide another mast at this location, given the existing multiuser masts have stated additional capacity, and this has not been based on speculative assumptions regarding capacity. In my opinion, the planning authority's second reason for refusal is valid and should be upheld by the Board.

In note Condition No. 2 of planning reference 13/609 states that any additional antennas or dishes onto the IRP 61metre structure will require prior written approval from the planning authority, it does not state, that these will be the subject of a planning application. The applicant claims this condition was attached due to the visual dominance of the site, and that the IRP mast would be more visually dominant

than the Cignal mast, therefore the IRP mast should be ruled out for co-location. This is incorrect, because the proposal Cignal mast is proposed adjacent to the Kilkenny Community Radio mast, and the cumulative impact of both masts and associated antennae and dishes will create more of a visual impact than the IRB mast. The Kilkenny County Development Plan requires the following:

To avoid proliferation, which could be injurious to visual amenities, the Council will encourage co-location of antennae on existing support structures and 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.

Proposals within the County for telecommunications antennae and support structures must show:

- a) the alternative sites considered and why the alternatives were unsuitable,*
- b) the number of existing masts within the County,*
- c) the long term plans of the developer in the County and the potential for further masts,*
- d) and the plans of other promoters and any prior consultations which the developer may have had with other mast owners*

I find the submission from eir on appeal supports the applicant's application. However, it is not a legally binding arrangement between the parties, and the Board cannot within its remit link both parties to a grant of planning permission. Eir is also currently in negotiations with IRP, and were in negotiations with KCR reading co-location. Therefore, the outcome with eir will be determined by commercial and technical issues beyond the remit of the planning system. Based on the evidence submitted, I do not consider an additional new free standing mast is necessary or sustainable at this location.

Appropriate Assessment

Having regard to the nature and scale of development and the significant distance from designated sites, 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.

9 Recommendation

- 9.1 The Board should refuse the proposed development for the following reasons and considerations.

10 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) the height (42m), scale and elevated location of the proposed development in an area where there are three existing permitted masts,

(c) the planning histories in the area for the existing masts

it is considered that the proposed development would lead to a proliferation of telecommunications structures where an opportunity for co-location exists in the immediate area on permitted masts and would seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

30th October 2018