



An
Bord
Pleanála

Inspector's Report ABP301677-18

Development

Construction of a 24m high Monopole carrying 3 no. antennas and 1 no. transmission dish and associated cabinet equipment.

Location

Jackies Restaurant, Dublin Road, Haggardstown, County Louth.

Planning Authority

Louth County Council.

Planning Authority Reg. Ref.

17/930.

Applicant

Three Ireland (Hutchison) Limited.

Type of Application

Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First Party -v- Refusal.

Appellant

Three Ireland (Hutchison) Limited.

Observers

(i) Geraldine Hyland, (ii) Donal Duggan.

Date of Site Inspection

4th September, 2018.

Inspector

Paul Caprani.

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1.0 Introduction

ABP301677-18 relates to a first party appeal against the decision of Louth County Council to refuse planning permission for the construction of a new 24 metre high monopole support structure to accommodate telecommunication antennas and other equipment. Louth County Council refused planning permission for five reasons relating to impact on residential amenity, size and scale of the structure, the structure would not cover the intended target coverage of lands, inadequate evaluation of alternative sites and its location within an area which is zoned residential.

2.0 Site Location and Description

- 2.1. The appeal site is located in Haggardstown on the Old Dublin - Belfast Road (R132) approximately 4 kilometres south of Dundalk and 1.5 kilometres west of the village of Blackrock. The proposed monopole is to be located at the corner of the surface car park associated with a public house and restaurant known as 'Jackies'. The public house and restaurant is located at the junction of the Old Dublin Road and the Mullagharlin Road which runs north-westwards from the Dublin Road and links up with the Dundalk Inner Relief Road to the north. The proposed monopole is to be located in the north-western corner of the car park approximately 40 metres from the public house and restaurant. There are a number of dwellinghouses facing onto the Mullagharlin Road to the south-west of the site. The Mullagharlin Road accommodates a number of detached dwellinghouses on relatively large sites along its alignment. The Dublin Road to the east accommodates commercial uses interspersed with some residential development, much of which has recently been developed or is currently being developed. Lands to the immediate north of the car park are currently undeveloped. Lands to the south on both sides of the Dublin Road accommodate residential development.
- 2.2. The site itself comprises of a rectangular area of land 5 metres by 6 metres to the immediate north-west of the existing car park. The site is bounded by surface car parking spaces to the east and by large mature trees to the west, north and south.

3.0 Proposed Development

Planning permission is sought for the construction of a 24 metre high monopole accommodating 3 antennas and one small dish within a 30 square metre compound surrounded by palisade fencing. The pole is approximately half a metre width at its base and this narrows to approximately 0.4 metres in width at the top of the structure. It is also proposed to accommodate telecommunications equipment within cabinets adjacent to the monopole structure.

4.0 Planning Authority's Decision

4.1. Decision

4.1.1. Louth County Council issued notification to refuse planning permission for five reasons which are set out in full below.

1. The proposed development would seriously injure the amenities of property in the vicinity, with specific reference to the visual impact of the 24 metre high monopole on (a) the two-storey dwelling approximately 50 metres to the north-west of the application site (b) those dwellings approximately 39 metres and 47 metres to the south-west of the application site.
2. The proposed development is located within lands identified as Residential 1 in the Dundalk and Environs Development Plan 2009-2015 (as extended) which has an objective to "protect and improve existing residential amenities and to provide for infill and new residential developments". A telecommunications structure is use class which is open for consideration on the basis that its use is one which by reason of its nature and scale, would not be in conflict with the primary zoning objective for the area. It is considered that the proposed development neither protects or improves existing residential amenity and would seriously injure the amenity of property in the vicinity of the development. The proposed development would, therefore, materially contravene Objective RS1 I in the Dundalk and Environs Development Plan 2009-2015 (as extended) and would be contrary to the proper planning and sustainable development of the area.

3. The revised target search aerial photographs submitted as further information on 10th April, 2018 does to correspond with the applicant's own proposed target cover area (Figure 2) as submitted on 14th December, 2017. The proposed site is shown to be in the upper west quadrant of the defined service coverage target area and clearly shows that the application site does not satisfy Three Ireland (Hutchison) Limited own stated 800 metres to 1,000 metres coverage criteria depicted in Figure 2 of the original planning statement, i.e. 1,000 metres coverage to the south of the proposed site falls 500 metres short of the identified target coverage at lands west of Fane View, Dublin Road. To permit the proposed development, having regard to such conflicting information and in the knowledge of the impact that such development would have on residential amenity as outlined in Reason 1 above would be contrary to the proper planning and development of the area.
4. Further information submitted on 10th April, 2018 clarifies that the "assessment of alternatives" in Section 6.0 of the applicant's planning report statement was a misrepresentation of the facts with specific reference to Fairways Supervalu site and Greenfield Option 1 being excluded as options for a rooftop structure and freestanding structures respectively on the basis that the landowner was not interested in the proposal. Despite this clarification, the applicant has failed to carry out an updated "assessment of alternatives" to include and/or discount these sites. In light of the foregoing, the Planning Authority considers that the justification for this particular site is fundamentally flawed and that a judgement based on this information would be contrary to the proper planning and development of the area.
5. In terms of the "Telecommunications Antennas and Support Structure Guidelines 1996" only as a last resort should freestanding masts be located in a residential area. The planning statement submission qualifies the site as a suitable "commercial site on the basis that it is in the corner of a car park serving a public house". However, the land on which development is proposed has a residential zoning, not a commercial zoning and the location of the proposed development is in an isolated position relative to the commercial premises and is in proximity to existing and permitted residential development. The Planning Authority does not accept the contention that the

site is a suitable commercial site. The applicant has failed to carry out a robust assessment of alternative sites to this residential area and as such, to permit the proposed development would be contrary to the proper planning and development of the area.

4.2. Information Submitted with the Planning Application

4.2.1. The application was lodged on 14th December, 2017. A covering letter was submitted by the applicant detailing the proposed development and the technical justification for the proposal. It is stated that the subject site is critical to meet coverage requirements in the area. The covering letter also sets out an evaluation of alternative sites and it is stated that alternative sites are few as there are a predominance of two-storey residential buildings in the area and very few higher buildings. The proposal goes on to assess the visual impact and how the proposal complies with national policy requirements in relation to telecommunications.

4.3. Observations

4.3.1. A large number of observations were submitted objecting to the proposed development. The contents of these observations have been read and noted.

4.3.2. The initial planner's report concludes that there has not been sufficient justification for the proposed development at this location and therefore request additional information in relation to the following:

- Further details in relation to the intended site coverage.
- Further details in relation to evaluation of alternatives.
- Further details in relation to the justification of locating the telecommunication mast in a residential area.
- Further photomontages which depict the visual impact from the proposal during winter months.
- Further details in relation to anticipated noise levels from the radio equipment cabinets.
- Revised newspaper notices.

4.4. Further Information Submission

- 4.4.1. The applicant submitted further information on 10th April, 2018.
- 4.4.2. Details of the intended coverage is set out in the response. It indicates a site coverage area of about 500 metres radius from the subject site.
- 4.4.3. In relation to alternative sites, it is stated that the subject site is the preferred site from a technical perspective. It is also considered that the proposed site was preferable to a greenfield site. The subject site is located within a car park of a public house and, notwithstanding the residential zoning objective, it is respectfully submitted that the site is commercial in nature.
- 4.4.4. Additional photomontages were submitted which taken on the 12th February.
- 4.4.5. Details of anticipated noise levels from the Three radio equipment cabinets are also submitted.
- 4.4.6. It is stated that this response to further information relates to clarification and does not relate to any amendments. Therefore, revised notices are not required.

4.5. Further Assessment by Planning Authority

- 4.5.1. A further planning report states that notwithstanding the applicant's further information submission, the Planning Authority are not satisfied that there has been sufficient justification for the proposed development at this location. Nor is the Planning Authority satisfied that more appropriate sites were considered and that the proposal is consistent with the residential zoning objective. For these reasons the planner's report recommended that planning permission be refused for the five reasons referred to above.

5.0 Planning History

There appears to be no relevant planning history relating to the subject site. Details of nine Board directions for various telecommunication masts are attached in a pouch to the rear of the file. These Board decisions relating to telecommunication masts throughout the country, any many of these decisions are referred to in the Grounds of the 1st Party Appeal and one of the observations submitted.

6.0 Grounds of Appeal

The decision was subject of a first party appeal by Three Ireland (Hutchison) Limited. The grounds of appeal are outlined below.

In relation to the first reason for refusal, it is stated that telecommunications infrastructure is frequently located in close proximity to residential development as such infrastructure is required to serve such areas. Reference is made to a number of examples where such telecommunication antennae are located in close proximity to residential development. Reference is also made to a planning inspectors report (PL26.247800) which acknowledges the need to place such structures in close proximity to residential development.

Furthermore, it is stated that the subject site cannot be considered a visually sensitive site. Notwithstanding this, it was nevertheless decided to use a slimline monopole in order to reduce visual impacts. Furthermore, it is proposed to provide additional landscape in order to screen the monopole structure in order to protect the amenity of adjoining houses. It is argued that a reasonable balance between protecting residential amenity and providing telecommunication services will be achieved. It is also noted that the area currently experienced large scale residential development. It is appropriate that new telecommunications infrastructure would be provided in advance of residential development.

In relation to the second reason for refusal reference is made to Section 37 of the Planning and Development Act which provides that the Board may in determining an appeal decide to grant planning permission even where the proposed development contravenes materially the development plan. It is argued that the applicants submit that the proposed development does not materially contravene Objective RES 1 of the Plan. In any case it considers that the provisions of Section 37 apply as the proposal is of strategic importance in accordance with policy guidance. It is argued that in the planner's report there has been no consideration of improvements to residential amenity that improved telecommunication infrastructure would provide. It is noted that Policy TE3 promotes the provision of competitive and comprehensive mobile telephony throughout the plan area. It is also stated that the proposed development is of strategic importance as it is in compliance with the national strategy regarding the provision of mobile communication services. Increase

demands for data usage can necessitate a new antennae support structure at the subject location.

The third and fourth reasons for refusal relate to the technical justification for the site and for these reasons are addressed together. A technical justification report is attached as Appendix C. It is stated that there are no alternative sites upon which to co-locate or cluster and the rationale for the subject site selection is set out in the Technical Report in Appendix C. The Planning Authority in determining the application had not taken into consideration “shell shrinkage”. This occurs in populated areas due to telecom equipment capacity restraint. There is demand for a new site in the Haggardstown area. The mast will ensure satisfactory customer experience in the area. Furthermore, due to the newly adopted Building Regulations, indoor coverage penetration has become more difficult and thus a higher density of sites will be required.

The final reasons for refusal makes reference to the Telecommunications Antennae and Support Structure Guidelines 1996. It states that these guidelines are somewhat out of date in terms of technological advances and requirements. The Guidelines do note however that “a location will be substantially influenced by radio engineering factors” and the Guidelines also acknowledge that the location and design of structures are influenced by technical requirements and that the operator will have limited scope in terms of changing same. The applicant in this instance is proposing a 24 metre high slimline monopole. This is the minimum height required to make the installation technically viable. It is reiterated that under the zoning objectives relating to the plan telecommunication structures are listed as open to consideration.

For the above reasons it is requested that An Bord Pleanála overturn the decision of Louth County Council and grant planning permission for the proposed development.

7.0 Appeal Responses

It appears that Louth County Council have not submitted a response to the grounds of appeal.

8.0 Observations

Two observations were submitted. These observations are outlined below.

8.1. Observation from Donal Duggan

- 8.1.1. It is argued that there are more suitable alternative sites in the area, as the area is a low density residential area. It is also stated that the monopole in question is circa three times the height of surrounding dwellings.
- 8.1.2. It is also argued that the ancillary equipment proposed to be attached to the monopole will result in a greater visual impact and the trees proposed will take some time to reach maturity therefore screening the proposed monopole. Furthermore, the upper section of the monopole must remain free from obstruction for technical reasons and this would result in a significant visual eyesore. It is argued that the Haggardstown area is not an urban area and the subject site is clearly located within a residential area. It is noted that there are numerous slimline monopole masts already located in the most densely populated area and these are situated in compliance with planning guidelines. None are visually obtrusive or positioned close to residential areas.
- 8.1.3. With regard to the technical justification for the proposed development, it is stated that coverage area seems to move to suit the location rather than being the optimal location to service coverage blackspots.
- 8.1.4. It is argued that the applicant has not carried out an adequate assessment of alternatives for alternative locations. Reference is made to the Supervalu site which was not given any consideration as an alternative site.
- 8.1.5. Reference is made to the Guidelines for telecommunication masts and it is stated that only as a last resort should freestanding masts be located in a residential area.
- 8.1.6. The observation submitted was signed by a number of residents in the area.

8.2. Observation from Geraldine Hyland

- 8.2.1. This observation was submitted on behalf of the observer by EHP Services.
- 8.2.2. In relation to the first and second reasons for refusal the observations support the Planning Authority's contention that the proposed development by virtue of its scale,

massing and design and close proximity to neighbouring residential properties will impact on the residential amenities of the area. The proposal will introduce “a foreign urbanising and visually obtrusive feature” into the semi-rural character of the existing environment. The proposal ignores the guideline’s key objective of only considering locations within a residential area as a last resort after all other options have been exhausted.

- 8.2.3. Details of the proposed landscaping as a mitigation measure will not successfully address the problem from a visual amenity point of view. It also suggested the trees proposed are all deciduous in nature and therefore will not screen the structure during the winter period. It is stated that the proposed development will have a zero mitigation effect and will result in an unacceptable level of visual intrusiveness along the Chapel and Dublin Roads. It will also have an overbearing impact on neighbouring dwellings.
- 8.2.4. The proposed development is materially contrary to the zoning objective of the Dundalk and Environs Development Plan. Reference is made to a number of decisions by An Bord Pleanála (in County Galway, Cork, Fingal) where An Bord Pleanála refused planning permission for similar type structures on the grounds of the unacceptable impact on surrounding residential amenity.
- 8.2.5. It is also noted that the Planning Authority, in refusing planning permission for the development, specifically referred to the material contravention of the development plan. It is argued that the current proposal before the Board fails to meet the criteria set out under Section 37(2)(a) of the Act with regard to overturning a decision of the Planning Authority which materially contravenes the development plan. It is argued that the applicant has not made any sound argument that the decision should be overturned under the provisions of Section 37(2)(a) of the Planning Act.
- 8.2.6. With regard to the technical justification it is noted that the technical justification report was compiled from in-house rather than independent sources. The report does not credit details of the baseline information used in compiling the coverage maps. It is also stated that the map submitted with the grounds of appeal directly contradict information on the appellant’s own website which indicate that the areas have sufficient 3G coverage.

- 8.2.7. The applicant has also not adequately explored alternative sites in the area which may be more suitable. Reference is made to numerous An Bord Pleanála decisions where permission was refused in various locations throughout the country for telecommunication masts on the basis that the applicant has not explored the possibility of co-locating or explored the possibility of locating the structure on alternative sites.
- 8.2.8. In relation to the fifth reason for refusal the observation states that the development is clearly in contravention of the residential zoning objective and the applicant has provided no rational objective or compelling argument for overturning the County Council's refusal.

9.0 Planning Policy Context

9.1. Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, Department of the Environment, July 1996.

- 9.1.1. Section 4.2 of the Guidelines relate to design and siting. It notes that location will be substantially influenced by radio engineering factors. In terms of the visual impact it is stated that great care will have to be taken when dealing with fragile or sensitive landscapes with other areas designated or scheduled under the Planning Acts or other legislation.
- 9.1.2. It is also stated only as a last resort and if the alternatives suggested in the Guidelines are either unavailable or unsuitable should freestanding masts be located in a residential area or beside schools.

9.2. Dundalk and Environs Development Plan

- 9.2.1. The subject site is zoned 'Residential 1' with the zoning objective to "protect and improve existing residential amenities and to provide for infill and new residential developments". Telecommunication masts are open for consideration under the residential zoning objective.
- 9.2.2. Chapter 9 of the Plan relates to Telecommunications and Energy. Section 9.2.4 specifically relates to mobile telephony. It states that the vital role of telecommunications in enabling Dundalk to reach its full economic potential is recognised. The importance of high quality telecommunications infrastructure for the

efficient freeflow of information is critical to the functioning and further development of the national economy. A high quality reliable mobile phone service is a necessity for both business users and the general public.

- 9.2.3. Policy TE3 seeks to promote the provision of a competitive and comprehensive mobile telephone network throughout the plan area. It also proposes to operate a presumption against the location of antennae support structures where such structures would have a serious negative impact on the visual amenity of sensitive sites and locations and require operators to share antennae support structures and sites where feasible.

10.0 Planning Assessment

I have read the entire contents of the file, have had particular regard to the Planning Authority's reasons for refusal and the arguments set out in the first party appeal. I have also had regard to the observations on file and have visited the subject site and its surroundings. I consider the critical issues in determining the current application and appeal before the Board are as follows:

- Impact on Residential Amenities
- Contravention of Zoning Objectives relating to the Site
- Technical Justification for Choosing the Subject Site
- Consideration of Alternatives
- Precedent Decisions
- Compliance with National Guidelines
- Material Contravention of Development Plan

10.1. Impact on Residential Amenities

- 10.1.1. A number of reasons in the Planning Authority's notification to refuse planning permission referred to the fact that the proposed development would adversely impact on the residential amenities of the area and would contravene the zoning objective which seeks to protect and enhance residential amenities. The monopole proposed is 24 metres in height and is slim build ranging from 0.5 metres to 0.4 metres in width. The applicant states that a 24 metre high pole is the absolute

minimum that would be required in order to provide appropriate coverage for the area. Standard monopole masts normally range between 20 to 35 metres in height. The mast in question therefore would be at the lower end of a typical mast height. In my opinion a slimmer monopole type structure is preferable from a visual amenity point of view than the more traditional steel lattice tower type mast.

10.1.2. The proposed telecommunications mast is located within a surface car park adjacent to a single-storey commercial building. Notwithstanding the zoning objective for the subject site the mast is not located within a suburban residential estate. I do acknowledge however that there are a number of residential dwellings in the wider area the closest of which are 40 or 50 metres away from the proposed structure. The location of the structure in my view is situated discreetly back from the roadway and is surrounded by mature trees. While I acknowledge the trees in question will not fully screen the proposed mast they will help obscure and mitigate against the most adverse visual impacts, particularly from vantage points in close proximity to the mast. The Board will note that the presence of mature trees to the west, south-west and north-west will assist in mitigating the visual impact for the closest dwellings along the minor road leading to Mullagharlin. I would not agree with the observation on file which suggests that the area in question is semi-rural in nature. The area in my view would be most appropriately classified as 'suburban' in nature and this is evident from the presence of large scale suburban estates along the Dublin Road. It is also apparent that the Dublin Road accommodates a significant amount of commercial development particularly to the north of the subject site.

10.1.3. The Board will note that the site nor its surroundings incorporate any form of designation in terms of visual sensitivity. There are no listed views or prospects relating to the site or in the vicinity of the site. I consider that telecommunication masts have in recent decades become part of the urban and suburban landscape.

10.1.4. In conclusion therefore I do not consider that the monopole in question is excessive in height. Furthermore, I consider it is located in a discreet location in the corner of a car park set back from the public road which is well screened by mature trees along its western and south-western boundary. Finally, I do not consider that the area is in any way visually sensitive but represents a typical suburban area where such telephony equipment is ubiquitous throughout the built-up areas throughout the State. Having regard to the slim and slender nature of the monopole, I do not

consider that it can be reasonably considered to be overbearing in the context of adjoining residential amenities. I therefore consider the proposed monopole is acceptable from a visual amenity point of view and would not seriously injure the residential amenities of the area as suggested in the Planning Authority's reason for refusal.

10.2. Contravention of Zoning Objectives relating to the Site

10.2.1. The subject site is zoned for residential development, however the subject site forms part of the curtilage of a commercial development namely a bar and restaurant which has been established on site for some time. Notwithstanding therefore that the proposed development is located on an area zoned for residential development the existing use on site is commercial and is likely to remain so in the short to medium term. There is no reference of any plans afoot to develop the subject site for residential development. I consider that the actual land use on the ground is a material consideration in determining the current application and appeal. While the subject site is zoned for residential development it is clearly located contiguous to a surface car park associated with a commercial development and therefore any reference in the national guidelines that freestanding masts should only be located in a residential area as a last resort would not strictly apply in this instance. While I acknowledge that there is residential development in the wider area, it is not unusual in the case of urban or suburban areas that telecommunications masts would be located within small neighbourhood and district centres where residential development is located in close proximity.

10.2.2. Finally, in relation to this issue I note that Telecommunication masts are not a non-permitted use under the zoning objectives set out in the development plan, telecommunication masts and equipment are 'open for consideration' under this land use objective and therefore should be determined on its merits and in accordance with the proper planning and sustainable development of the area.

10.3. Technical Justification for Choosing the Subject Site

The third reason for refusal issued by the Planning Authority argues that the applicant has not demonstrated appropriate technical justification and that the proposed site falls 500 metres short of the identified target coverage area along the Dublin Road. It is also stated that there is conflicting information with regard to the

proposed target coverage area. The applicant has submitted a Technical Justification Report in response to the grounds of appeal see (Appendix 1C). Details of the existing indoor coverage for the Blackrock/Haggardstown area are set out in the report. According to the diagrams on page 7 and 8 of the technical justification report, there appears to be a blackspot in 3G coverage in and around the Haggardstown area adjacent to the Dublin Road. For the purposes of evaluating the technical justification I have also visited the Three Ireland website which includes a Coverage Area Map. It is also clear from this map (see Map appended to my report on file) that the area in and around the subject site constitutes an area (hatched in orange) where 4G coverage is only available outdoor and not indoor. Based on the above information, I can only conclude that there is justification for a telecommunications mast at this location in order to augment and improve existing coverage. The Board should also note that the area is currently undergoing largescale residential development particularly to the south of the subject site which will result in greater demand for more telecommunication coverage in this area.

10.4. **Consideration of Alternatives**

There appears to be no requirement under the Guidelines for any application for mobile telephony mast which statutorily requires an applicant to investigate alternatives site location. It would however constitute best practice to thoroughly evaluate sites in a given area in order to select the optimum site from both a planning and technical perspective. It is also clear from the guidelines that the investigation of alternatives particularly in relation to co-locating masts constitutes best practice in order to reduce the proliferation of masts.

The technical justification report submitted with the grounds of appeal indicates that the applicant has investigated six separate alternatives. These are indicated in Section 3.2 of the report. It appears that none of the alternatives are appropriately located in order to provide the specific coverage required for the area. Having inspected the site, I noted that the area in the vicinity of the site in question is predominantly two-storey and there are no high buildings which would be suitable to accommodate a smaller mast while providing appropriate coverage. I consider that, notwithstanding the fact that the subject site is located in an area zoned for residential development, the actual site in question is located contiguous to a surface car park and adjacent to a bar and restaurant. I consider that such a location is

preferable to locating any such mast within a residential estate. For these reasons I consider that the subject site is appropriate and may provide the most optimum location to accommodate a telecommunication mast to serve the specific area in question.

10.5. Precedent Decisions

Both the grounds of appeal and one of the observations submitted supporting the decision of the Planning Authority makes comprehensive reference to various precedent decisions by An Bord Pleanála in granting and refusing telecommunication masts in order to (a) support the arguments set out in the grounds of appeal or (b) the decision of the Planning Authority to refuse planning permission. I do not consider it appropriate to draw any concrete conclusions from the precedents referred to. These precedent decisions referred to relate to telecommunication masts located throughout the country and are guided by different sets of locational circumstances, different sets of land use zoning designations and different sets of policy provisions relating to the sites in question. In my view it would be inappropriate to draw any conclusions from the decisions of An Bord Pleanála in respect of previous applications which do not relate to the subject site and its surroundings. The application before the Board should be determined in relation to the particular set of circumstances pertaining to the site and its surroundings and to the policy and provisions set out in the Dundalk and Environs Development Plan.

10.6. Compliance with National Guidelines

The guidelines on Telecommunication Antennae and Support Structures from 1996 state that only in a last resort should freestanding masts be located in a residential area. I have already argued above that the subject site, while being located in an area zoned for residential development, constitutes a commercial site as it is located in the corner of a car park serving a public house. In my view these set of circumstances are materially different than locating a telecommunication mast within a residential estate. I have argued above that, notwithstanding the zoning provisions pertaining to the area, the site in my view constitutes the most appropriate site to accommodate a telecommunication mast to serve the area in question. The Board will note that large swathes of land surrounding the subject site are also zoned for residential development, and thus if the arguments set forward by the Planning

Authority were accepted, this would result in significant restrictions on potential sites which would be available to accommodate a telecommunication mast to service the catchment area in question. The Board should also be mindful of the fact that there is a need to provide a higher density of telecommunication and telephony infrastructure to satisfy the exponential increase in demand for data requirements than that originally envisaged or anticipated under the 1996 Guidelines. The proposed development therefore in my view should be evaluated in the context of the exponential growth in data usage and demand for next generation telecommunications in infrastructure rather than solely relying on statements contained in the Departmental Guidelines from 1996.

10.7. **Material Contravention of Development Plan**

10.7.1. The second reason for refusal states that the proposed development would materially contravene Objective RES of the Dundalk and Environs Development Plan 2009-2015 (as extended). The provisions of section 37(2)(b) the Act says that *“where Planning Authority has decided to refuse planning permission on the grounds that the proposed development materially contravenes the Development Plan, the Board may only grant planning permission in accordance where it considers that:*

- (a) the proposed development is of strategic or national importance,*
- (b) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned,*
- (c) permission for the proposed development should be granted having regard regional planning guidelines for the area or guidelines under section 28, policy directives under 29, the statutory obligations of any local authority in the area, and the relevant policy of the government, the Minister or any Minister of the government, or*
- (d) permission for the proposed development should be granted having regard to the pattern of development in the area, permissions granted in the area since the making of the development plan.*

10.7.2. In relation to this issue I reiterate to the Board that the provision of a telecommunication mast is a use which is ‘open for consideration’ under the development plan and is not classed as a non-permitted use under the said plan. Notwithstanding this point reason for refusal no. 2 clearly states that the proposal

materially contravenes the development plan. While this may be somewhat of a moot point having regard to the land use zoning objectives relating to the site in question, there can be no doubt in my opinion that the national planning framework highlights the need and importance to provide for and develop effective digital communications and services infrastructure throughout the country. I refer the Board to National Policy 48 of the NPF which states that 'it is a national policy objective in co-operation with relevant departments in Northern Ireland to develop a stable innovative and secure digital communications and services infrastructure on an all island basis'. The provision of requisite telecommunication infrastructure is in my opinion vital to achieve such an objective. It could be reasonably argued in my view therefore that the proposed development adheres to the criteria set out under Section 37(2)(b)(i) in that the proposed development is of strategic or national importance.

- 10.7.3. Furthermore, there are numerous policies in the development plan (see Section 9.2.1 of the development plan and 9.2.4 of the development plan which highlights the importance of providing high quality broadband network for both domestic and commercial use and the need to provide a high quality reliable mobile service for both business users and the general public.
- 10.7.4. Policy TE3 seeks to promote the provision of a competitive comprehensive mobile telephony network throughout the plan area. Having regard to the stated policies of the development plan, it could be reasonably argued in my opinion that there are specific policy statements and objectives in the development plan which support the provision of mobile telephony in the Dundalk and Environs area and in this regard the Board could overturn the decision of the Planning Authority and grant planning permission having regard to the provisions of Section 37(2)(b)(ii).
- 10.7.5. Therefore, in conclusion if the Board agree with my assessment above, there is in my opinion circumstances where the decision of the Planning Authority could be overruled in accordance with the provisions of Section 37(2)(b).

11.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the 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.

12.0 EIA Screening Determination

The subject development does not fall within a class for which EIAR is required.

13.0 Conclusions and Recommendation

Arising from my assessment above, I consider that the proposed development would not adversely impact on residential amenity, would not be contrary to the land use zoning objective relating to the site, and would adequately serve the proposed target coverage area which appears to be currently experiencing sub-optimal coverage. I therefore recommend that the decision of Louth County Council be overturned in this instance and planning permission be granted for the proposed development.

14.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

15.0 Reasons and Considerations

Having regard to:

- (a) the national strategy regarding the provision 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, as updated by Circular Letter PL/07/12 issued by the Department of the Environment, Community and Local Government on the 19th day of October, 2012,
- (c) the nature and scale of the proposed telecommunications support structure,
- (d) The sites location adjacent to surface car park adjacent to a pub and restuarant

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

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. Prior to commencement of development, 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.
Reason: In the interest of visual amenity and orderly development.
3. Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.
Reason: In the interest of public health.
4. Details of a proposed landscaping scheme shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.
Reason: In the interest of visual amenity.
5. The transmitter power output antennae type and mounting configuration shall be in accordance with the details submitted with the application and, notwithstanding the provisions of the Planning and Development Regulations 2001, and any statutory provisions amending or replacing them, shall not be altered without a prior grant of planning permission.
Reason: To clarify the nature and extent of the permitted development and to facilitate a full assessment of any future alterations.
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.

Paul Caprani,
Senior Planning Inspector.
9th October, 2018.