



An
Bord
Pleanála

Inspector's Report ABP-301731-18

Development	Retention of existing 42m high telecommunications support structure carrying transmission equipment and ground based equipment, all enclosed in security fencing together with access track
Location	Letteragh Td, Mount Ben Dash , Kilmaley
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	18/7
Applicants	Hibernian Cellular Networks
Type of Application	Retain
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellants	Hibernian Cellular Networks
Observers	Cellcom Ireland Ltd.
Date of Site Inspection	1 August 2018
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located at Letteragh Td , Mount Ben Dash , Kilmaley, Co Clare in a remote upland area approximately 4km to the southwest of on the Shoulder of Ben Dash. This upland feature (267 metres OD) is approximately 15 kilometres south-west of Ennis and within 10 kilometres of the more extensive and prominent Slieve Callan (391 metres OD) which is to the south-east. Ben Dash is characterised by extensive afforestation interspersed with cultivated land with a sparse pattern of residential development. The main public road in the area is that running west from Kilmaley to Kilmihil R484 and to the south is the N68 Ennis to Kilrush. The Mid Clare Way, a way marked walking route traverses the area by way of public roads and private / forestry tracks. The site is occupied by an existing telecommunications mast (42m in height) with exchange containers and is accessed by way of a private access track extending from a forestry road. There are two further masts one owned by Towercom and a mast owned by Cellcom.
- 1.2. The site area is not stated but the fenced rectangular area appears to be c0.05ha.

2.0 Proposed Development

- 2.1.1. The proposed development is the retention of the existing 42m high telecommunications support structure carrying transmission equipment and ground based equipment, all enclosed in security fencing together with access track.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to refuse planning permission for the following reason:

Having regard to the elevated siting of the mast and the elevated and exposed topography of the area, the Planning Authority considers that the development for which retention is proposed, taken together with existing

telecommunications masts in close proximity, results in a proliferation of such masts at this location. In accordance with the relevant Ministerial Guidelines issued under Section 28 of the Planning and Development Act, such a proliferation is not acceptable at this location without evidence that demonstrates that the capacity of existing infrastructure has been exhausted and that new masts are required to meet the requirements of telecommunications operators. The Planning Authority is not satisfied on the basis of the information submitted that the existing masts lack capacity for prospective users. Therefore, the development for which retention is proposed would be contrary to the Ministerial Guidelines and seriously injure the visual amenities of the area, and therefore, would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. There are two planning reports on file. The first recommended the issuing of a request for further information which issued on two points.

3.2.3. Further information request

1) The planning authority is cognisant of the need for the provision of telecommunications equipment and balancing this with the protection of visual amenities. Requesting

a) A set of photomontages that demonstrate the potential visual impact viewed from locations within a radius of 5km including from the Mid-Clare Way in closer proximity to the site.

b) A Revised site layout plan indicating the location and finished floor level of the existing mast and structures to the north and west.

c) A contiguous section (north-south) indicating the proposed structure relative to adjoining mast structures.

2) The planning authority is not satisfied that options for co-location have been fully examined.

a) Clarify the numbers of operators that it intended will use the subject mast.

b) Re-assess the options for co-location on the nearby structures and submit the results of your investigations to co-locate equipment on these masts.

3.2.4. A response to the further information request was submitted 4th April 2018.

3.2.5. Second Planning Report

3.2.6. The second planning report recommended refusal for one reason as set out above. The report includes:

The mast for which retention is sought is visible from a number of points in the locality as are the two existing masts on Ben Dash. In particular the masts are visible from points on the northeast, east and southeast direction, from distances of between 1km and 2km of the site, seen in photos 3, 4, 7 and 10. Taken together the masts are prominent in the landscape from those viewpoints as the east facing slopes of Ben Dash are adjoined by significantly lower ground levels in the eastern direction generally.

Re co-location, the applicant states that a security company transmits from the mast and that one further radio station and two wireless broadband operators will locate there. They are not named, nor is there any documentation from those existing or proposed operators that would support the application.

It is stated that the applicant licenses space on the mast to third party companies and therefore it is not appropriate for the applicant company itself to co-locate to other masts. Taken together with the absence of details identifying confirmed operators it is concluded that the applicant did not give sufficient consideration to whether any such operators could utilise space on the other existing masts.

3.2.7. Other Technical Reports

3.2.8. A screening report for appropriate assessment concludes that appropriate assessment is not required.

3.3. **Prescribed Bodies**

A submission from the Irish Aviation Authority is referred to in the planner's report, which states that they have no observation to make.

3.4. Third Party Observations

A third party observation from Cellcom Ltd has been read and noted.

4.0 Planning History

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

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

ABP-300118 PA Reg Ref P17/631 Cellcom Ireland Ltd, for construction of a 40m structure, carrying telecommunications equipment enclosed with palisade fencing and access gate. Retention of exchange containers and 80m access track.

Permission granted.

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

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

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

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

5.0 Policy Context

5.1. Development Plan

The Clare County Development Plan 2017-2023 refers.

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

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

8.8.10 Telecommunications Infrastructure - Fast reliable and cost effective telecommunications can encourage economic development in an area and can enrich the quality of life at home by offering new choices in education, entertainment and communications. Clare County Council will respond positively to developments of telecommunications infrastructure whilst taking into account other planning policies.

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

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

Developments in these areas will be required to demonstrate:

- That the site has been selected to avoid visually prominent locations;

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

5.2. **Circular Letter: PL 07/12**

National Broadband Plan identifies a number of potential barriers to efficient Next Generation Broadband (NGB) rollout and the necessary actions required to address these barriers including proposed revision of Telecommunications Antennae and Support Structures Guidelines (1996).

Attaching a condition to a permission for telecommunication masts and antennae which limit their life to a set temporary period should cease.

5.3. **Natural Heritage Designations**

Pouladatig Cave SAC Site Code 000037 circa 9.5km to the northeast and Newhall and Edenvale Complex SAC Site Code 0002091 c 10km east are the nearest Natura Sites located some 9½ and 10 km away.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. A first party appeal against the decision to refuse permission has been received from Charter House Infrastructure & Planning Consultants, which includes:

- The reason for refusal runs contrary to local national and European planning policy: Clare County Development Plan 2017-2023, NDP 2018-2027, Project 2040, the National Broadband Plan 2012, the recommendations of the Mobile Phone and Broadband taskforce set up in 2016 and the European Union's Digital Agenda.

- The existing development has been approved by Clare Co Co and ABP in 2010 and by Clare Co Co in 2012 and there has been an established mast in this location for c 35 years.
- The applicant is an independent provider of tower infrastructure with c60 masts nationwide, who purchased the site in 2010 with a view to upgrading the existing structure.
- There is support for the mast, letters provided.
- Failure to receive permission would lead to financial hardship, loss of transmission options for broadband and mobile operators and the removal of choice and competition.
- The CDP is cited.
- The 1996 guidelines are cited. The reference to clustering is cited.
- On strategic 'high sites' often one or two towers is inadequate to cater for all users, particularly with regard to interference between the equipment of different users.
- Towers will also have their own capacity and wind loading constraints. This is the reason many strategic 'high sites' have many towers, with some having in excess of 10 towers. One tower can only take a certain amount of equipment thus multiple towers are required at strategic high sites such as Mount Ben Dash
- Since the guidelines the position has changed. Mobile operators are less likely to invest in physical mast infrastructure; new mast infrastructure is now generally provided by independent infrastructure providers of which the applicant is one; others include Towercom, Signal, ESB Telecoms all of whom compete for support from mobile operators
- The idea of sharing among and between competing infrastructure providers is not a reasonable proposition, as evidenced in this case where both Towercom and Cellcom have made observations with the objective of securing refusal of the subject development.

- The applicant makes statements in relation to its independent status in contrast to the large tower company competitors and in relation to the investment it has made.
- Had circular 07/12 been issued in July 2012 rather than in October of that year the applicant would have been in receipt of a permanent permission and would not be in the vulnerable position of having to secure a fourth permission in 8 years for essentially the same development.
- Project 2040 is referred to.
- National Development Plan 2018-2027 is referred to.
- The National Planning Framework is referred to.
- Under the heading ‘The Planning History and Development Justification’ the history of telecommunications use of the site since 1985 is outlined. The inspector’s report on 239035 is quoted in relation to the nature of the site the planning authority’s assessment that the area has a robust character and that they cannot accommodate the currently required apparatus on the existing or identical replacement structure and therefore a bigger better structure is required.
- Under 12/334 the applicant’s sought a revision to the permitted 2010 design. Permission for a revised tower consisting of a reduced height of 40m including a reduced base width of 3.38m. The planner’s report is quoted as considering the principal of the application acceptable. The period of the permission was for 4 years to expire on the date of expiry of the 2010 permission.
- The current application arises due to the expiry of the permission and there are some changes to the access track that required regularisation and the structure is 2m higher than that permitted in 2012. As a compromise the applicant would be willing to remove the top 2m if required.
- Re the reason for refusal –
 - The elevated siting of the mast and exposed location
 - The proliferation of such masts at this location

- That there is no evidence that demonstrates that the capacity of existing masts has been exhausted or that new masts are required to meet the requirements of telecommunications operators
- That the development would seriously injure the visual amenities of the area.
- These points have been considered over the course of three separate planning applications. On each occasion it was determined that the application had merits and that there were compelling reasons for granting the structure and associated works.
- In relation to their statement that they are not satisfied that the existing masts lack capacity for prospective users' at the time of refusal Cellcom tower, from a visual analysis appeared to be at capacity and Towercom state in their submission dated 28/04/2018 that they need to increase capacity 'Towercom
- It is a natural progression that thinner stayed structures, once their functional lifetime has been reached, will be upgraded to more robust freestanding structures capable of accommodating the needs of wireless operators to include mobile and broadband operators. The range of mase users is continuously growing to incorporate mobile telephone operarors, broadband companies, wi-max companies, state agencies, private enterprise, broadcasting entities eg TV and radio stations, security firms etc.
- There is currently a single user of the mast.
- The grounds takes issue with details of the planner's report.
- With the passing of time, more and more radio, broadcast and mobile telecoms firms will utilise the application structure as national dependence on digital transmission grows in line with economic development. This structure will offer much needs necessary infrastructure and choice.
- Towers such as this structure are multi-decade essential infrastructure and must cater for existing customer needs but also future needs. The applicant is preparing its infrastructure for 5G, the National Broadband Plan (NBP), the Internet of things (IoT). This tower will assist in improving connectivity for

residents and businesses in Clare and will be instrumental as part of the National Broadband Plan.

- Letters of support from Nova Broadband, Vitatel (broadband operators) and BTS Broadcast Technical Services, (serving the technical needs of the Irish Radio Broadcast Industry) and Connect, Alarm Control in relation to their interest in use of the mast.

6.2. Planning Authority Response

6.2.1. The planning authority has responded to the grounds of appeal, which includes:

Noting the Boards decision on PL 300118, noting the submissions from putative occupiers of the subject mast, and noting that PL 300118 authorises a replacement mast with increased capacity.

The planning authority has no wish to make a contingency submission.

6.3. Observations

6.3.1. An observation on the grounds of appeal has been received from CMC Planning Consultants on behalf of Cellcom Ireland Ltd., which includes:

- It refers to the Boards decision on the Cellcom structure (ABP 300118-17) which was made on 11th May 2018, construction commenced on June 18th and continues apace. The new tower will be installed and available for third parties from the end of July and will provide state of the art accommodation. Condition 3 of their permission requires them to make their structure available.
- Signal, in compliance with this condition has offered co-location to third parties on the Cellcom Tower and received positive responses including from Viatel, one of the four operators also supporting the Hibernian application. Their support for Hibernian is not evidence of a unique requirement for Hibernian's mast.
- They acknowledge that creating monopoly type situations is of no benefit to the industry but there are two authorised structures in the area and already

choice. If there is demand for another structure it does not require a 42m mast to fulfil it.

- They disagree with the assertion that the application relates to a development previously approved by Clare Co Council – P10/1060 and P12/334. Both permissions have expired and neither permitted the development now proposed for retention. The permission P12/334 was detailed as a reduced height of 40m and a reduced base width of 3.38m.
- The 42m mast was not previously approved no was the access track and the previous grants expired in 2016.
- Cellcom state that when they made their application in August 2017 the old Hibernian stayed mast was lying vacant on the ground and the 42m structure carrying a which antenna was yet to be constructed. Nor was the access track or compound commenced on site. They suggest that the unauthorised development likely took place in Nov-Dec 2017.
- Condition 2 of the ABP 2010 grant conditioned a temporary permission to allow for the development to be reassessed for any changes in circumstances that would affect the decision. The planner's report on the subject application states that circumstances have changed.
- When the question of replacing Hibernian's small stayed mast was considered in 2010 and 2012 permission was granted for a 40m mast because there was a proven requirement and because the in situ Cellcom structure could not have offered operators an alternative location as it was at capacity loading.
- The planning decisions on Cellcom took into consideration the shortfall of suitable infrastructure.
- The planning authority and the Board have been consistent recognising the requirement for telecommunications infrastructure within this robust landscape.
- The observation challenges the relevance of arguments made by the first party in relation to its independent status and its financial commitment.
- The decision to refuse was based on the inability to prove demand for a third large scale structure.

- The mast installed is over engineered and under subscribed.

6.4. **Prescribed Bodies**

- 6.4.1. Bord Failte have submitted an observation. They note that the original order from Clare County Council states that:

the Planning Authority is not satisfied on the basis of the information submitted that the existing masts lack capacity for prospective users. Therefore, the development for which retention is proposed would be contrary to the Ministerial Guidelines and seriously injure the visual amenities of the area, and therefore, would be contrary to the proper planning and sustainable development of the area,

which they support. They request that permission be refused on the grounds that it could impact on the visual amenity and landscape of the area.

7.0 **Assessment**

- 7.1.1. The issues which arise in relation to these appeals are appropriate assessment, principle of development, visual impact and impact on the amenities of the area, and co-location and the following assessment is dealt with under these headings.

7.2. **Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development and 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.

7.2.2. **Principle of Development**

- 7.2.3. Having regard to the location of the site in an area outside any scenic designation, and to the planning history of the area including the establishment of existing and permitted telecommunications structures, and to the policies within the development plan and national plans which promote the provision of telecommunications

infrastructures, it is considered that the development of a telecommunications mast at the site is acceptable in principle.

7.3. Visual impact and impact on the amenities of the area

- 7.3.1. Serious injury to the visual amenities of the area is referred to in the decision to refuse.
- 7.3.2. The planner's report on the previous application which permitted development on the site, is quoted in the grounds, as considering the principal of the application acceptable.
- 7.3.3. The Board previously considered the potential for visual impact and impact on the amenities of the area in granting permission for a similar development on this site in 2011 under ref PL03.239035. The Board's consideration included the location of the site outside any heritage landscape or other significant scenic designation in the development plan and the general pattern of development in the vicinity and the Board considered that subject to compliance with the conditions they set out the proposed development would not seriously injure the amenities of the area.
- 7.3.4. I accept that the structure will be locally prominent but it is not likely to be dominant within the landscape and forestry in the vicinity serves to mitigate the visual impact. I consider that the landscape is sufficiently robust to accommodate this development and that visual impact and impact on the amenities of the area, should not be a reason to refuse permission.

7.4. Co-location

- 7.4.1. The planning authority decision refers to a proliferation of masts at this location, that such a proliferation is not acceptable without evidence that demonstrates that the capacity of existing infrastructure has been exhausted and that new masts are required to meet the requirements of telecommunications operators. On the basis of the information submitted the Planning Authority is not satisfied that the existing masts lack capacity for prospective users.
- 7.4.2. Names of existing operators on the mast and prospective operators, withheld from the planning authority, are supplied with the grounds of appeal.
- 7.4.3. Letters of support from operators accompany the grounds.

- 7.4.4. The grounds of appeal states that on strategic 'high sites' often one or two towers in inadequate to cater for all users, particularly with regard to interference between the equipment of different users; towers will also have their own capacity and wind loading constraints, which is the reason many strategic 'high sites' have many towers, with some having in excess of 10 towers; one tower can only take a certain amount of equipment thus multiple towers are required at strategic high sites such as Mount Ben Dash; and they explain that mast infrastructure is provided by independent infrastructure who compete for support from mobile operators.
- 7.4.5. The observer acknowledges that creating monopoly type situations is of no benefit to the industry but there are two authorised structures in the area and already choice. They state that if there is demand for another structure it does not require a 42m mast to fulfil it. They state that one of the letters of support submitted by the first party is similar to one seeking co-location on their mast.
- 7.4.6. I accept the need to minimise the number of telecommunications masts particularly on prominent sites. It is not clear that there is an immediate need for a mast of this scale, but it can be seen from the history of this location that the situation evolves and demand continually increases. There has been a telecommunications mast on this site since 1985 and on two other sites in the vicinity for a considerable length of time: in one case since 1994 and in the other since the 1970s. The structures now occupying these sites are not the same as the original structures.
- 7.4.7. As the observer acknowledges monopoly type situations should be avoided. I accept the argument made that this is a strategic high site, that it can accommodate the development, and that it will provide a necessary service to operators. In my opinion co-location should not be a reason to refuse permission.

8.0 Recommendation

- 8.1.1. In the light of the foregoing assessment I recommend that planning permission be granted in accordance with the following conditions, for the following reasons and considerations.

9.0 Reasons and Considerations

10.0 Having regard to -

- (a) the national strategy regarding the improvement of mobile communications services,
- (b) the guidelines relating to telecommunications antennae and support structures which were issued by the Department of the Environment and Local Government to planning authorities in July, 1996,
- (c) the location of the site outside any heritage landscape or other significant scenic designation in the development plan for the area,
- (d) the general pattern of development in the vicinity, and
- (e) the planning history of the area,

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

11.0 Conditions

1. The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 4th day of April 2018 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. A low intensity fixed red obstacle light shall be fitted as close to the top of

the mast as practicable and shall be visible from all angles in azimuth. Details of this light, its location and period of operation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public safety.

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

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

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

Reason: In the interest of orderly development.

Planning Inspector

29 August 2018

Appendices

- 1 Photographs
- 2 Extracts from the Clare County Development Plan 2017-2023
- 3 Circular Letter: PL 07/12