



An
Bord
Pleanála

Inspector's Report ABP-302139-18

Development	Retention of existing reinforced concrete foundation structure (4.5 metres by 4.5 metres by 1.0 metre) including associated steps and safety handrail and three number 1.3 metre high panel antennae, two number 0.6 metre diameter link dishes. two number 0.3 metre diameter link dishes attached to an existing 32 metre high lattice communications structure previously granted planning permission (LPA Reference: 12/301)
Location	ESB Communications Site, Clonmel Road, Townspark, Cahir County Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	18600561
Applicant(s)	ESB Telecoms Ltd
Type of Application	Permission
Planning Authority Decision	Grant

Type of Appeal	First / Third Party
Appellant(s)	John Cummins
Observer(s)	Rebekah Cummins
Date of Site Inspection	04 th October 2018
Inspector	Colin McBride

1.0 Site Location and Description

- 1.1 The subject site, which has stated area of 0.009 hectares, is located within the town of Cahir in the south of Co. Tipperary. The subject site is located to the east of Cahir town centre. The site is located on the northern side of the Clonmel Road (N24) and immediately adjacent the bridge over the railway line . There is 32m high lattice mast on the site on a concrete plinth (1m high), a 2.8m high equipment cabinet and ancillary equipment, as well as a smaller ESB control building. There are a number of antennae/link dishes attached to the mast. Boundary treatment consists of a 2.4m high chainlink fence and 1m high stone wall along the roadside boundary. Development in the vicinity is mainly residential with a mixture of detached and semi-detached dwellings located immediately to the west and east on the opposite side of the railway line. Other uses in the area include the Garda Station on the opposite side of the Clonmel road to the subject site and a petrol station/garage to the south west. There are two schools located in the vicinity of the site. One located off Market Street approximately 140m to the south of the subject site and one off Convent Road approximately 200m to the south of the subject site.

2.0 Proposed Development

- 2.1. Permission is sought for retention of an existing reinforced concrete foundation structure (4.5m x 4.5m x 1m) Including associated steps and safety handrail and 3 no.1.3m high panel antennae, two number 0.6m diameter link dishes, 2 no. 0.3m diameter link dishes attached to an existing 32 m lattice communications structure previously granted planning permission (ref no. 12/301).

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to three conditions. The conditions are standard in nature.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

Planning Report (17/06/18): It was noted that the proposal was consistent with Local Area Plan policy and National policy on telecommunication structures. A grant of permission was recommend subject to the conditions outlined above.

3.3. **Prescribed Bodies**

Iarnrod Eireann: Outlines stipulations required regarding use of a crane on site, discharge of surface water and requirements that any works meet the terms of the Railway Safety Act.

Irish Aviation Authority: No observations to make.

3.4. **Third Party Observations**

John Cummins, Pearse Street, Cahir Co. Tipperary:

- Application is invalid as no application for permission was lodged prior to the expiry of the 5 year permission under ref no. 12/301 as stipulated under condition no. 2.
- It is noted that antenna and link dish configuration was altered and is not as that granted under ref no. 12/301 and the stipulations of condition no. 5. The proposal should be refused for failing to comply with planning law.
- Alternative locations should have been considered in Cahir in the five year period in context of National Guidelines and the location in close proximity to residences and schools.
- It is noted that the health impact of telecommunications structures should Inot be ignored with reference to studies that raise issues concerning adverse health effects associated with such.

4.0 Planning History

12/301: Permission granted for continuance of use of an existing reinforced concrete foundation, 5 no. link dishes attached to a 32m high lattice structure.

PL23.223351: Permission granted for retention of concrete foundation structure and associated steps, 3 no. antennae, 4 no. link dishes attached to existing 32m high lattice communications structure.

RL2384: Referral whether works carried out in relation to the existing telecommunications mast is or is not development or is or is not exempted development. It was decided that the existing radio mast is exempted development. The provision of the concrete foundation structure or erection of additional antennae to a total of 12 antennae and 6 dishes is not exempted development.

5.0 Policy Context

5.1. Development Plan

The relevant plan is the Cahir Local Area Plan 2011. The site is on land zoned R1 with a stated objective 'to preserve and enhance existing residential amenity, ensuring that any new development, does not result in excessive overlooking of existing residential properties, does not reduce general safety for existing residents and does not reduce the usability and security of existing public and private open space'.

Section 5.8: Telecommunications

Policy INF 10: Telecommunications

The Council will facilitate proposals for telecommunications masts, antennae and ancillary equipment 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 save in the following locations:

- (a) Within significant views or settings of National Monuments or protected structures
- (b) In close proximity to schools, churches, crèches, community buildings, other public and amenity/conservation areas and residential areas.

5.2 National Policy

The aim of the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, 1996” is to offer general guidance on planning issues so that the environmental impact is minimised, and a consistent approach is adopted by the various planning authorities. Circular Letter PL 07/12, issued in October 2012 by the Minister for the Environment, Community and Local Government under section 28 of the Planning and Development Acts 2000-2012, updated certain sections of the Guidelines and states in Section 2.2, inter alia,

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

5.3 Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been lodged by John Cummins, Pearse Street, Cahir, Co. Tipperary

- The Council are not adhering to Planning Laws and the application is invalid as no application for permission was lodged prior to the expiry of the 5 year permission under ref no. 12/301 as stipulated under condition no. 2.
- It is noted that antenna and link dish configuration was altered and is not as that granted under ref no. 12/301 and the stipulations of condition no. 5.
- It is noted that no time restrictions have been placed on the development and concern is raised about the possibility in the future that such structures are proven to have harmful health effects. The appellant notes there are concern regarding health impact of telecommunications structures on those living in the vicinity and he refers to studies that raise issues concerning adverse health effects associated with such.

6.2. Applicant Response

Response from the Applicant ESB Telecoms Ltd.

- The applicants acknowledge that the development on site had fallen into an unauthorised state and the current proposal is an attempt to regularise such. The application was assessed on its merits and determined that such would not be visually intrusive.
- The applicant notes that there has been changes to the equipment attached to the existing structure and that it is standard operation to upgrade equipment for operational reasons. The current application is clear in that retention is sought for 3 Antennae and 5 link dishes (3 antennae and 4 link dishes granted under the 12/301. The current application seeks to retain all structures with it noted that sharing infrastructure is encouraged under national policy. It is noted that the additional dish does not alter the appearance or overall impact of the structures on site.
- It is noted that the Ministerial Circular PL07/12 advised planning authorities to cease attaching time limit conditions to telecommunications structures. It is noted that the proposal does not relate to the structure itself but to the ancillary ground equipment, three antennae and five dishes attached to the

structure. It is considered that application of time limit is not merited in this case.

6.3. **Planning Authority Response**

Response by Tipperary County Council

- It is noted that the fact the application for retention was made after the five year permission period does not affect the validity of the application.
- In relation to the changes to equipment attached it is noted that application seek retention for unauthorised development on site.
- There is no condition limiting the time period for permission due to Ministerial Circular PL07.12.

6.4. **Observations**

Observation by Rebekah Cummins, 2 Park Avenue, Cahir, Co. Tipperary.

- It is noted that the proposal is not consistent with Local Area Plan policy as there are national monuments and protected structure within views of this development as well as it being in close proximity to two school and a crèche.

7.0 **Assessment**

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

Validity/unauthorised development

Health issues

Appropriate Assessment

7.2 Validity/unauthorised development:

7.2.1 Permission is sought for retention of an existing reinforced concrete foundation structure (4.5m x 4.5m x 1m) including associated steps and safety handrail and 3 no. 1.3m high panel antennae, two number 0.6m diameter link dishes, 2 no. 0.3m diameter link dishes attached to an existing 32 m lattice communications structure previously granted planning permission (ref no. 12/301). Under permission ref no. 12/301 condition no. 2 stipulated that permission was for a period of 5 years and that the structures permitted should be removed unless prior to the end of the period permission has been granted for their retention or continuance for a further period. The permission under ref no. 12/301 and the retention application subject to this appeal was lodged after the expiry of such. The appellant notes that there has been a breach of planning laws and that the application should have been declared invalid on this basis.

7.2.2 The proposal is for retention of a number of elements associated with an existing telecommunications structure including concrete foundation structure, handrail, antennas and link dishes. The actual mast structure itself is not subject to retention and is an established structure. The applicants acknowledge that there are unauthorised structures on site (due to expiration of previous permission) and that the current applications seeks to regularise such. I do not consider that the nature of the proposal and the fact that permission ref no. 12/301 has expired renders the current application invalid. There is provision for retention applications under the Planning and Development Act, 2000 (as amended) and in this case permission is sought for retention of a number of items and such should be assessed on its merits. I do not consider that the application would have been invalid on this basis and the appellant has not demonstrated that such would be case. I would note in relation to unauthorised development the Local Authority have ample powers to deal with such

under the Planning and Development Act, 2000 (as amended) and that the Board has no function in such matters. The Boards remit is to assess the development as sought on its merits.

7.2.3 The appellant also referred to condition 5 of ref no. 12/301 and the fact that the configuration of antennas and link dishes was altered and is not as that granted under ref no. 12/301. The applicants have acknowledged that alterations were made and note that retention is sought for such. I refer to the previous paragraph of this section and note that such is also relevant in relation to this aspect of the appellant's submission. The proposal is for retention of development indicated in the application and is clearly an application to regularise the existing situation on site. It is not the Boards function to determine applications based on the carrying out of unauthorised development. The proposal is an application for retention of certain elements and such should assessed on its merits.

7.2.4 The proposal is for retention of a number elements associated with an existing support structure that has for significant period of time been used for telecommunications equipment. The principle of the proposed development is established at this location and uses an existing structure. Refusing permission would necessitate use of another structure or construction of a new support structure at a different location. I do not consider that the proposal would be contrary to Development Plan policy due to its proximity to structures of heritage value or schools and note that the proposal entails continued use of an established support structure for the purposes of telecommunications equipment and that the support structure itself is not the subject to this application. I consider that the continued use of the existing structure is acceptable in the context of the national guidelines and the proper planning and sustainable development of the area. I would also note that in the event of a grant of permission a time limit should not be placed on the development as per the advice of the Ministerial Circular PL07/12 advised planning authorities to cease attaching time limit conditions to telecommunications structures.

7.3 Health issues:

7.3.1 The licensing regime for mobile telecommunications operators administered by the Commission for Communications Regulation controls the emission of radiation from telecommunications antennae in light of the available scientific evidence regarding its impact on health. It would not be appropriate for the planning system to attempt to replicate the specific controls established by another legislative code, even if it had the requisite expertise or statutory powers to do so. The concerns regarding health and safety raised in the appeal would not, therefore, justify a refusal of planning permission for the development.

7.4 Appropriate Assessment:

7.4.1 Having regard to the nature and scale of the proposed development and its 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.

8.0 **Recommendation**

8.1. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

9.1 Having regard to:

- (a) the strategic importance of the national broadband service,
- (b) the guidelines relating to telecommunications antennae and support structures issued by the Department of the Environment and Local Government to planning authorities in July, 1996,
- (c) Circular Letter PL 07/12 issued by the Department of the Environment, Community and Local Government in October, 2012,
- (d) the policies and objectives set out in the Cahir Local Area Plan 2011, and
- (e) the existing pattern of development in the vicinity,

it is considered that, subject to compliance with the conditions set out below, the proposed development would provide a necessary service, including co-location, would not seriously injure the visual amenities of the area or the amenities of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and particulars submitted to the planning authority on the 04th day of May 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. When the telecommunications structure and ancillary structures are no longer required, they shall be removed and the site shall be reinstated at the developer's expense.

Reason: In the interest of orderly development.

3. Surface water from the site shall not be permitted to drain onto the adjoining public road or properties.

Reason: In the interest of traffic safety and orderly development.

Colin McBride
Planning Inspector

08th October 2018