



An
Bord
Pleanála

inspector's Report ABP-303189-18

Development	Retention of an existing previously approved (Reg. Ref. 11/368) 30m high telecommunications structure.
Location	Bawnard Townlands, Gneeveguilla, Rathmore, Co Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/961
Applicant(s)	Vodafone Ireland Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party
Appellant(s)	Fred O'Sullivan on behalf of Gneeveguilla Residents
Observer(s)	None
Date of Site Inspection	26 th February 2019
Inspector	Elaine Power

1.0 Site Location and Description

- 1.1. The site is located in a rural area, approx. 5km north-west of Rathmore village and approx. 1km east of Gneeveguilla village. The rural area is characterised by agricultural lands bound by hedgerows and mature trees. There is an area of evergreen forest located approx. 5m to the north of the site.
- 1.2. The telecommunication structure is located in an elevated position to the rear of a farm complex. It is located approx. 9m north of agricultural buildings, 15m north of the farmhouse and 20m north of the public road. There are a number of one-off rural houses located along the (unnamed) local road between Gneeveguilla village and Knocknagree village.
- 1.3. The existing telecommunications structure is approx. 30m in height with a lattice steel frame. There are existing panel antennas and link antennas located on the structure and an equipment container at ground level. The development is contained within a compound which is bound by a palisade fence.
- 1.4. Access to the site is via the unnamed local road and through the private farm complex.

2.0 Proposed Development

- 2.1. The development comprises the retention of an existing 30m high, lattice steel framed telecommunications structure with existing panel antennas and link antennas and an equipment container at ground level, all located within a fenced compound. Permission was previously granted in 2011 for a temporary period of 5 years.

3.0 Planning Authority Decision

3.1. Decision

The decision to grant retention permission was subject to 2no conditions.

Condition 1: Clarified that retention permission was granted for the development submitted in the application.

Condition 2: Required that the site be reinstated on the removal of the telecommunications structure and ancillary structures.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

The Area Planners report (28th November 2018) noted the sites planning history and considered that the retention of the existing structure would not result in any additional impacts on the existing residential amenities.

3.2.2. *Other Technical Reports*

Fire Officer: Recommended the application be deferred pending a receipt of an application for a Regularisation Certificate by the Building Control Authority.

Biodiversity Officer: No comment.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

An objection was received from Fred O'Sullivan on behalf of the residents of Bawnard and Lisheen Gneeveguilla. The concerns raised include the following: -

- Permission was granted in 2011 for a 5-year period and the local residents understood that the structure would be removed in 2016. The structure is unauthorised and should be removed.
- The structure is in close proximity to residential properties, amenity spaces, the local school and the village and therefore materially contravenes the Development Plan and the proper and sustainable development of the area.
- There was no public consultation regarding the development. The site notice was positioned adjacent to an existing felling notice which caused confusion.
- There is a link between the ill health, in particular cancer diagnosis of local residents and the proximity to the electromagnetic field emitted by the structure. There are more remote locations for this type of development where it will not affect the health of a community.
- Alternative broadband options are available in the area.

4.0 Planning History

Subject Site

- ***Reg. Ref 06/79, PL08.216997:*** A 5-year temporary permission was granted in 2006 for a 24m high tower with associated compound and a new access track.
- ***Reg. Ref. 09/987, PL08.235062*** A 5-year temporary permission was granted in 2010 for an extension to the existing tower to provide a 30m high telecommunication structure with an additional 6m frame, 3 antennas, 2 no. radio link dishes and equipment cabinet
- ***Reg. Ref. 11/368, PL08.239276:*** A 5-year temporary permission was granted in 2011 for the retention of the 30m high telecommunications structure.

On each occasion the Board granted permission following a decision to refuse permission by Kerry County Council.

5.0 Policy and Context

5.1. Circular Letter: PL 07/12 – Telecommunication Antennae and Support Structures Guidelines.

This Circular Letter revised the Telecommunication Antenna and Support Structures Guidelines, 1996. The circular advises that Planning Authorities should cease attaching time limit conditions to telecommunications masts, except in exceptional circumstances. With regard to Health and Safety Aspects it states the following: -

'The 1996 Guidelines advise that planning authorities should not include monitoring arrangements as part of planning permission conditions nor determine planning applications on health grounds. This Circular Letter reiterates that advice to local planning authorities. Planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matters in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process'.

It is also a requirement that Contribution Schemes include waivers for broadband infrastructure provision.

5.2. Killarney Municipal District Local Area Plan, 2018-2024

The subject site is located on unzoned lands outside of the settlement boundary for Gneeveguilla. The vision for Gneeveguilla is to *'ensure that it fulfils its role as the primary focus for the development of the surrounding rural areas, to encourage consolidation of the village settlement and the retention and improvement of local services and facilities to serve the village and surrounding rural area'.*

5.3. Kerry County Development Plan, 2015-2021

Chapter 7 – 'Transport and Infrastructure' sets out a number of objectives relating to supporting Information and communications technology. The Planning Authority

support the sustainable development of mast infrastructure at appropriate locations and note that telecommunication antennae should be located in areas that minimise any negative visual intrusion on the surrounding area.

5.4. Kerry County Council Development Contributions Scheme 2017

Section 4 of the scheme states that *'masts and antennae, dish and other apparatus/equipment for communication purposes shall be charged at a rate of €10,000. This contribution shall be split 50/50 between the Roads & Transport and the Community & Amenity. If Development Contributions have been charged previously on a mast then they shall be exempt under this scheme from additional contributions'*.

5.5. Natural Heritage Designations

There are no relevant designated areas in the immediate vicinity of the site.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal by Fred O'Sullivan on behalf of Gneeveguilla Residents against the decision of Kerry County Council to grant permission. The main grounds of appeal are detailed below.

- The development is unauthorised. Permission was granted in 2011 for a 5-year period and therefore the telecommunication structure should have been removed in 2016.
- The telecommunication structure is located within 1km of 100 no. plus residential properties, a school, GAA grounds and the village.
- There was no public consultation. The site notice was unclear as it was located adjacent to a felling notice, which caused confusion. In addition, the

notice was set back in the hedge can was therefore difficult to see from the public road.

- The electromagnetic field emitted by the telecommunication structure negatively impacts on the health of local residents. There are more remote locations where a telecommunication structure would not affect the health of the local residents.
- There are alternative broadband providers in the area.

6.2. Applicant Response

- 6.2.1. The detailed response was submitted by FocusPlus Limited on behalf of Vodafone Ireland Limited which addressed the concerns raised in the third-party appeal. In particular, the applicant acknowledges that the previous planning permission, Reg. Ref 11/368 has expired and noted that this was an oversight. With regard to public consultation the applicant has stated that this is an existing structure and no public consultation was required. The site notice was inspected by the Planning Authority and was deemed acceptable.
- 6.2.2. The issue of visual amenity is also addressed. The applicant stated that the structure has been in place for 13 years and has been granted permission by An Bord Pleanála on 3 no. separate occasions. The structure is relatively slim, steel framed lattice tower which was previously deemed to be an appropriate design for this location. The site is not located in a high amenity landscape and due to the surrounding topography, views of the structure are limited. Eir and Three Ireland are also currently using this installation which avoids the proliferation of telecommunication structures.
- 6.2.3. With regard to concerns that there is a link between the electromagnetic field emitted from the structure and ill health of local resident's the applicant has stated that the existing installation is fully compliant with the relevant Health and Safety legislation.

Health issues are not a planning concern and the applicant is satisfied that all health and safety requirements have been adhered to.

- 6.2.4. It is also noted that the existing installation is vital to the provision of reliable and quality telecommunications services in County Kerry. If permission is refused essential coverage will be lost. There are no additional structures within the area that would meet Vodafone's service provision obligation.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority stated that the site notice was inspected on the 23rd October 2018 and was considered to be in accordance with Article 19 of the Planning and Development Regulations, 2001 (as amended).

- 6.3.2. It was also noted that there is no conclusive evidence linking electromagnetic radiation from telecommunication antennae to ill health, in particular cancer.

6.4. Observations

None

7.0 Assessment

- 7.1 Concerns are raised in the appeal that the electromagnetic field emitted by the telecommunication structure is negatively impacting on the health of local residents. The applicant has stated that the existing installation is fully compliant with the relevant Health and Safety legislation. Circular Letter PL07/12 states that planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matters in respect of telecommunications infrastructure. It also notes that telecommunication infrastructure is regulated by other codes and such matters should not be additionally regulated by the planning process. The issue of health and safety will therefore not be considered any further

7.2 The main issues of the appeal relate to residential and visual amenities, Development Contribution and Appropriate Assessment requirements. I am satisfied that no other substantial issues arise. The main planning issues can be dealt with under the following headings:

- Residential and Visual Amenities.
- Development Contribution.
- Appropriate Assessment.

7.2 Residential and Visual Amenities

7.2.1 The existing 30m high telecommunications structure is a lattice steel frame with existing panel antennas and link antennas. An additional equipment container is located at ground level within a fenced compound. The compound is approx. 11.8m in width by 11.4m in depth and bound by a palisade fence. The applicant has stated that additional service providers also use the subject telecommunication structure to reduce the proliferation of telecommunication structures, which is in accordance with Development Plan policy.

7.2.2 The site is not subject to any landscape designations for natural heritage or scenic amenity. It is slightly elevated, however due to the topography of the area and the location of mature trees and hedges the structure is generally screened from the public road and the village of Gneeveguilla. Due to the location of the structure and the level of screening provided it is considered that the structure does not injure the character of the rural area or the visual amenities of area.

7.2.3 The farmhouse is located approx. 15m south of the telecommunication structure and there is an additional one-off rural dwelling located approx. 18m south of the telecommunication structure. There are also a number of one-off dwellings located along the (unnamed) local road and within the village of Gneeveguilla. Having regard to the distance of the telecommunication structure from any residential properties and the orientation of the site it cannot be considered to have any impact

in terms of overbearing or overshadowing. As the structure has been in place for approx. 13 years it is my opinion that its retention will not result in any negative impacts on the existing residential amenities.

7.3.4 Due to the location of the structure it is considered that additional antenna could be provided or alterations to the antenna type and mounting configuration could be altered without impact on the residential or visual amenities of the area. It is therefore considered that a condition restricting the number and configuration of antenna is not required in this instance.

7.3 *Development Contribution*

Circular Letter PL07/12 states that all future Development Contribution Schemes must include waivers for broadband infrastructure provision. The Kerry County Council Development Contribution Scheme, 2017 notes that telecommunication structures shall be charged at a rate of €10,000. However, if development contributions have been charged previously then they shall be exempt from additional contributions. As a development contribution was applied under Reg Ref. 11/368, PL08.23976 the development is exempt from an additional contribution.

7.4 *Appropriate Assessment*

Having regard to the nature and scale of the proposed development and the distance from 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 Recommendation

It is recommended that permission be granted subject to conditions

9 Reasons and Considerations

Having regard to the the provisions of the Kerry County Development Plan 2015-2021 and Circular Letter PL07/12, the location of the site and the nature and scale of the telecommunication structure it is considered that, subject to compliance with the conditions set out below, the development to be retained would not seriously injure the amenities of the area. The proposed development would, therefore be in accordance with the proper planning and sustainable development of the area.

10 Conditions

1. The development shall be retained 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. Within six months of the cessation of the use all structures on site shall be removed and the site shall be reinstated. Details relating to the removal and reinstatement of the site shall be submitted to and agreed in writing with the planning authority prior. Reinstatement shall be deemed to include the grubbing out of the access track created in association with the development permitted herein.

Reason: In the interest of the visual amenities of the area

Elaine Power
Planning Inspector

11th March 2019