



An  
Bord  
Pleanála

## Inspector's Report ABP-304751-19

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<b>Question</b>	Whether the change from emergency to commercial services mast, is or is not development, or is or is not exempted development
<b>Location</b>	Eir Exchange, Gorticmeelra, Donamon, County Roscommon
<b>Declaration</b>	
Planning Authority	Roscommon County Council
Planning Authority Reg. Ref.	DED 363
Applicant for Declaration	Michael Hussey
Planning Authority Decision	Refer to the Board
<b>Referral</b>	
<b>Referred by</b>	Roscommon County Council
<b>Owner / Occupier</b>	Eircom Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30 <sup>th</sup> September 2019
<b>Inspector</b>	Colm McLoughlin

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## **1.0 Site Location and Description**

- 1.1.** The referral site is located in the rural Roscommon townland of Gorticmeelra, approximately 10km northwest of Roscommon town. It fronts directly onto a local road (L-1629), which connects with the N60 national road approximately 300m to the north of the site.
- 1.2.** The site is currently occupied by a telecommunication exchange facility, with a pedestrian path leading to a single-storey service building, which is flanked to the rear by a 15m-high steel telecommunications structure enclosed by a timber panel fence. The front boundary is set back 3m from the back edge of the road and is marked by a concrete post and rail fence. The north side and rear boundary are marked by a post and mesh-wire fence. An electricity pole is also situated on the site.
- 1.3.** The surrounding area is characterised by rolling agricultural fields bounded by mature trees and hedgerows, interspersed with farmsteads and one-off housing. There is a house and associated farmyard complex located adjacent to the south of the site.

## **2.0 The Question**

- 2.1.** The following is the question put forward by the referrer to the planning authority:
  - whether the change of use from an Emergency Services Mast to a Commercial Mast is development, or is development, which is exempted development or which is not exempted development.
- 2.2.** In the interest of clarity, it is considered appropriate that the question referred to the Board be reworded as follows:
  - whether the change of a telecommunications structure at Eir Exchange, Gorticmeelra, Donamon, County Roscommon from the provision of emergency services telecommunications services, to the provision of commercial telecommunications services, is or is not development, or is or is not exempted development.
- 2.3.** I intend to proceed with my assessment on the basis of the reworded question.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1. On the 11<sup>th</sup> day of June 2019, a request for a declaration on the above question was received by Roscommon County Council from Mr. Michael Hussey.
- 3.1.2. The planning authority did not issue a declaration, as they stated in their Planning Report dated the 20<sup>th</sup> day of June 2019, that in the absence of a clear definition of the terms ‘commercial mast’ or ‘emergency services mast’ in the planning legislation, it would be appropriate to refer the question to An Bord Pleanála for a declaration under Section 5 of the Planning and Development Act 2000, as amended (hereinafter referred to as ‘the Act’).

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The assessment contained in the Planning Officer’s report (June 2019) can be summarised as follows:

- a mast on the site was previously permitted for use by the emergency services;
- the planning history and relevant legislation, including definitions for ‘telecommunications network’ and ‘telecommunications service’ are outlined;
- there is no distinct definition as to what constitutes a mast, including a commercial mast or an emergency services mast.

#### **3.2.2. Other Technical Reports**

- None received.

## **4.0 Planning History**

### **4.1. Referral Site**

- 4.1.1. The following recent planning applications relate to the referral site:

- ABP Ref. 304418-19 / Roscommon County Council (RCC) Ref. PD/19/81 – retention permission granted in August 2019 for a 15m-high telecommunications structure and associated equipment and a grant of permission for additional antennae and other equipment to this structure;
- ABP Ref. PL20.230660 / RCC Ref. P08/178 – a ten-year planning permission was granted in February 2009 for a 15m-high telecommunications support pole to carry three radio aerials for use by the emergency services with associated equipment and fencing.

## **4.2. Relevant Referrals**

4.2.1. There have been numerous referrals relating to telecommunications infrastructure decided by the Board, including the following:

- ABP Ref. 302441-19 – in May 2019 the Board decided that the attachment of telecommunications antennae to a lamppost supporting structure and the erection of ancillary equipment at Monkstown Road, Monkstown, County Dublin is development and is exempted development;
- ABP Ref. PL86.RL2829 – in September 2011 the Board decided that the attachment of telecommunications antennas (panel and dish type) to two 18m-high floodlight columns and the erection of ancillary equipment at Wicklow Rovers Football Pitch, Whitegates, Dublin Road, Wicklow town is development and is exempted development.

4.2.2. I am not aware of any referrals requesting a declaration in relation to similar issues raised in this referral.

## **5.0 Policy & Context**

### **5.1. National Guidance**

- Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996)
- Circular Letter PL07/12 - revising elements of the 1996 Guidelines.

## 5.2. Local Planning Policy

- 5.2.1. Policies and objectives relating to telecommunications developments are contained in the Roscommon County Development Plan 2014-2020. Section 4.7 outlines the role of telecommunications investment in furthering the social and economic development of the county. Section 4.7.2 specifically addresses the 'Mobile Phone Network Development'. Section 9.33 of the Plan provides technical requirements for telecommunications.

## 5.3. Natural Heritage Designations

- 5.3.1. The nearest designated sites to the appeal site, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), are listed in the table below.

Table 1. Natural Heritage Designations

Site Code	Site Name	Distance	Direction
004097	River Suck Callows SPA	7km	Southeast
002110	Corliskea /Trien/Cloonfelliv Bog SAC	10km	Northwest
000296	Lisnageeragh Bog and Ballinastack Turlough SAC	12km	Southwest
000301	Lough Lurgeen Bog/Glenamaddy Turlough SAC	14km	Southwest

## 6.0 Statutory Provisions

### 6.1. Planning and Development Act 2000, as amended

- 6.1.1. Section 2(1) of the Act states that except where the context otherwise requires:
- 'development' has the meaning assigned to it by Section 3 of the Act;
  - 'alteration' includes
    - (a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

- 'structure' means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and —
  - (a) where the context so admits, includes the land on, in or under which the structure is situate, and
  - (b) in relation to a protected structure or proposed protected structure, includes —
    - (i) the interior of the structure,
    - (ii) the land lying within the curtilage of the structure,
    - (iii) any other structures lying within that curtilage and their interiors, and
    - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (iii)*;
- 'use', in relation to land, does not include the use of the land by the carrying out of any works thereon;
- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

6.1.2. Section 3(1) of the Act states that:

- 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land'.

6.1.3. Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including Section

4(1)(h) providing for the carrying out of works for the maintenance, improvement or alteration of any structure that would not materially affect the external appearance so as to render it inconsistent with the character of neighbouring structures.

6.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations 2001-2019 (hereinafter 'the Regulations').

## **6.2. Planning and Development Regulations 2001-2019**

6.2.1. Article 5(1) of the Regulations provides the following definitions:

- 'mobile telephony' means public mobile telephony;
- 'telecommunications network' means the whole of the telecommunications infrastructure and any associated physical infrastructure of any network operator;
- 'telecommunications service' means services which consist wholly or partly in the transmission or routing of signals on a telecommunications network or both transmission and routing.

6.2.2. Article 10(1) of the Regulations provides for the following:

- Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not-
  - (a) involve the carrying out of any works other than works which are exempted development;
  - (b) contravene a condition attached to a permission under the Act;
  - (c) be inconsistent with any use specified or included in such a permission, or;
  - (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.



## 7.0 The Referral

### 7.1. Referrer's Case

7.1.1. The referrer's case can be summarised as follows:

- the declaration should clarify whether or not development and exempted development has taken place, although in responding to the question put forward greater focus should be placed on whether or not development has taken place;
- an emergency service use would be a sui generis use, therefore the exemptions set out in the Regulations for telecommunications equipment would not apply;
- intensification of use of the site for commercial services would also place restrictions on exempted development rights for the property;
- a change of use from an emergency services use to a commercial use amounts to a material change of use and fits the planning definition for development;
- in assessing the previous planning appeal (ABP Ref. PL20.230660) permitting the telecommunications development on site, it was clearly articulated that there was an obvious distinction between an emergency services mast and a commercial services mast, whereby the Inspector considered that the proposed use of the mast to facilitate a Digital Radio Emergency Services (DRES) use represented an exceptional circumstance that would allow the mast to be erected within 100m of a house;
- the site was first used as a Telecom Éireann exchange in the 1950s;
- the change of use needs to be considered with respect to parking provision, sight visibility and servicing, including the industry knowledge that a commercial mast would require more maintenance and routine ongoing access than an emergency services mast.

## **7.2. Planning Authority's Response**

7.2.1. In response to consultation from An Bord Pleanála, a submission from the planning authority was received on the 4<sup>th</sup> day of July 2019, detailing the recent planning history of the site and responded regarding procedural matters.

## **7.3. Owner's Case**

7.3.1. A submission from the stated owner of the site in relation to the referral question, was received by the Board on the 24<sup>th</sup> day of July 2019, and this can be summarised as follows:

- there is no change of use from emergency services mast to a commercial mast and the existing use of the site for telecommunications services has not changed;
- the previous permission for the mast granted by An Bord Pleanála in 2009, provided for a telecommunications mast and did not restrict its use as an emergency services mast. The permitted antennas would be used by the emergency services;
- the existing mast on site is a telecommunications mast and is not specifically an emergency services or a commercial telecommunications mast;
- in assessing the 2008 applications, neither the planning authority or An Bord Pleanála assessed the telecommunications mast based on whether or not it would be used for commercial or emergency services;
- recent planning appeal decisions by An Bord Pleanála removed conditions restricting the attachment of additional equipment to telecommunication masts, thereby facilitating co-location between operators, which is encouraged within relevant planning policy;
- in paying the Section 48 development contributions for the subject mast under condition no.13 of the 2009 permission, the developer paid a contribution for a 'communication mast' and not a 'not for profit community-related mast', which would have incurred a substantially lower contribution;

- in the scenario presented, the only change that would be required, would be for additional antenna to be attached to the mast;
- through the conditions of permissions, planning authorities frequently require that telecommunications masts be made available for co-location of service providers equipment and examples of co-location sites of commercial and emergency services equipment are listed.

## **8.0 Assessment**

### **8.1. Introduction**

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the use of the site for commercial telecommunications services, in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development within the meaning of the relevant legislation.

### **8.2. Is or is not development?**

- 8.2.1. Development is defined in section 3 of the Act as meaning 'except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'. Having regard to the question, as reworded above, the referrer wishes to address whether or not a material change in the use of the subject land or structures on this land would or would not take place. Therefore, the test in terms of whether the suggested change of use comprises development, is firstly whether or not there is a change of use and, if so, whether or not the change of use is a material change of use.

#### Is it a Change of Use?

- 8.2.2. In order to determine whether there is a change of use, it is necessary, to determine the permitted use and, on that basis, to determine if the question referred would comprise a change of use.
- 8.2.3. In 2009 An Bord Pleanála granted a ten-year planning permission for a 15m-high support pole to carry three radio aerials for use by the emergency services with

associated equipment and fencing (ABP Ref. PL20.230660 / RCC Ref. P08/178). A total of 13 conditions were attached to this permission, including numerous restrictions on the development. Under condition 2(a) no other equipment should be attached to the permitted pole and under condition 2(b) only three 3.9m emergency radio aerials should be attached to the pole. Condition no.5 of the permission placed restrictions on the power output, the antennae and the mounting configuration, to comply with the details submitted with the planning application. Condition no.9 stated that 'no material change of use of the mast shall be made without a prior grant of planning permission', in order to safeguard the amenities of the area.

8.2.4. In August 2019, An Bord Pleanála granted retention permission for a 15m-high telecommunications structure and associated equipment, along with permission for additional antennae and other equipment to this structure (ABP Ref. 304418-19 / RCC Ref. PD/19/81). Conditions of the permission did not restrict the operation of the telecommunications structure to a specific service sector, such as the emergency services sector or the commercial sector. Drawing no. TRN6061-PI01 Revision A submitted with this application identified the then 'existing emergency services radio aerials' atop the 15m-high telecommunications mast structure, as well as 'proposed future operator mast equipment', in the form of antennas and dishes mounted onto the telecommunications structure, below the emergency services equipment. The development description used did not explicitly express that permission to use the structure by a commercial telecommunications service provider was being applied for. As part of the planning application the applicant stated that the additional dishes and antennas would potentially be used by licensed telecommunications operators providing 3G, 4G and broadband coverage. While the reasons and considerations for granting planning permission refer to the 'nature and scale of the proposed development', specific reference or weight would not appear to be given to the specific telecommunications service sectors, which the telecommunications infrastructure and site would serve. This permission clearly allows for both emergency services and commercial operators to operate telecommunications services from the site.

8.2.5. During my site visit, I noted that equipment similar to that identified in the most recent planning application for the site (ABP Ref. 304418-19 / RCC Ref. PD/19/81) as 'emergency services radio aerials', were in situ and mounted on the

telecommunications structure, while other equipment, including the proposed equipment to serve the licenced operators of 3G, 4G and broadband services was not evident.

- 8.2.6. The Regulations define a 'telecommunications service' as services which consists wholly or partly in the transmission or routing of signals on a telecommunications network or both transmission and routing. Emergency services in Ireland are operated by An Garda Síochána, the Ambulance Service, the Fire Brigade and the Irish Coast Guard. Commercial telecommunications services are operated by various organisations under licence from the Commission for Communications Regulation (ComReg). A standard dictionary definition for a 'service' includes 'a system supplying a public need such as transport, communications, or utilities such as electricity and water' and for 'telecommunications' includes 'the technology of sending signals and messages over long distances using electronic equipment'.
- 8.2.7. There is existing telecommunications equipment mounted on the structure, in the form of aerials and these are understood to be used for the transmission of emergency services telecommunications. While the equipment is currently understood to be used for emergency services telecommunications, this equipment could be used by a commercial services operator to transmit telecommunications, regardless of whether or not the equipment provides the typical technical characteristics required to operate a commercial telecommunications service.
- 8.2.8. The Regulatory definition does not differentiate between a telecommunication service operated either by the emergency services sector or the commercial sector. For the telecommunication service to change from the provision of services to the emergency services sector to the provision of services to the commercial sector, only the service operator would necessarily have to change, which is not a material planning issue. The telecommunications structure and equipment would remain and a telecommunication service would continue, albeit operated by a different service provider. The site would remain as a telecom exchange facility and the telecommunications structure would continue to be used for telecommunications services, which the recent permission clearly allows for. A change of use of the telecommunications structure or the land would not arise in such circumstances.

8.2.9. Consequently, I am satisfied that the change of the telecommunications mast structure from the provision of emergency services to the provision of commercial services would not comprise a change of use and, therefore, is not development.

#### Is it a Material Change of Use?

8.2.10. Having determined above that I consider that the question posed by the referrer would not comprise a change of use, it is not necessary to consider whether a material change of use would or would not occur.

8.2.11. Notwithstanding this, should the Board be of the opinion that a change of use of the telecommunications mast structure would arise, given the matters raised and addressed in the assessment in section 8.2 above, substantial impacts would not occur and, accordingly, I am satisfied that a material change of use would not arise.

### **8.3. Is or is not exempted development**

8.3.1. Notwithstanding the submission from the stated owner of the referral site, inferring that the only change that would be necessary for a telecommunications service operator to use the site would be for 'additional antenna to be attached' to the telecommunications mast, the nature of the question put forward by the referrer, as subsequently reworded above, does not question the type of equipment or otherwise that would be required to operate a commercial telecommunications service from the site. While I note extensive and specific decisions on such referral matters relating to telecommunications developments, as decided by the Board, including those referenced in section 4.2 of this report, and the exempted development provisions within Class 31 of Part 1 to Schedule 2 to the Regulations, as stated above, no question regarding the attachment of equipment arises in this referral case.

8.3.2. In conclusion, given the nature of the question and as a conclusion has been reached that no development would take place, the issue of exempted development does not arise.

## **9.0 Recommendation**

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the change of a telecommunications mast structure at Eir Exchange, Gorticmeelra, Donamon, County Roscommon from the provision of emergency services telecommunications services, to the provision of commercial telecommunications services, is or is not development, or is or is not exempted development:

**AND WHEREAS** Michael Hussey requested a declaration on this question from Roscommon County Council on the 11<sup>th</sup> day of June, 2019:

**AND WHEREAS** Roscommon County Council requested a declaration on this question from An Bord Pleanála on the 25<sup>th</sup> day of June, 2019:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) sections 2 (1) and 3 (1) of the Planning and Development Act, 2000, as amended,
- (b) article 5 (1) of the Planning and Development Regulations 2001-2019,
- (c) the planning history of the site, and
- (d) the report of the Planning Inspector:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the change of the telecommunications mast structure from the provision of emergency services telecommunications services, to the provision of commercial telecommunications services would not comprise a change of use of the land or structures thereon;

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred

on it by section 5(4) of the Planning and Development Act, 2000, as amended, hereby decides that the change of the telecommunications mast from the provision of emergency services telecommunications services to the provision of commercial telecommunications services, is not development.

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Colm McLoughlin  
Planning Inspector

16<sup>th</sup> October 2019