



An
Bord
Pleanála

Inspector's Report ABP-305021-19

Development	Retention of telecommunications structure and equipment containers
Location	Bishop's Island, Watergrasshill, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	19/4863
Applicant(s)	Three Ireland Services (Hutchinson) Ltd.
Type of Application	Retention
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Tarak Ben Amor
Observer(s)	Kevin Burke Con Power Siobhán Cahalane & John Ryan
Date of Site Inspection	12 th September, 2019
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The site of the proposed development is located on the south-western side of the village of Watergrasshill, approximately 20km to the north of Cork City. There is an existing telecommunications structure with a range of antennae attached and equipment containers at its base located within a site enclosed by palisade fencing. The site is accessed via an overgrown laneway linked to a minor road to the north. The site immediately adjoins a recently constructed housing estate of two-storey houses, 'Glen Dara', which is to the east. The appellant's house comprises one of the nearest detached houses to the north-east. This part of the village of Watergrasshill is undergoing significant expansion, with further housing being developed in the immediate vicinity of the telecommunications site.

2.0 Proposed Development

- 2.1. The proposed development comprises the retention of the existing 30m high telecommunications support structure, antennae, link dishes, the associated equipment containers and the security fence.
- 2.2. The application details included a cover letter and a letter from the property owner allowing the making of the planning application.
- 2.3. In response to a further information request by the planning authority, a statement of compliance with the International Commission for Non-Ionising Radiation Protection (ICNIRP) Guidelines was submitted.

3.0 Planning Authority Decision

3.1. Decision

On 22nd July, 2019, Cork County Council decided to grant permission for the retention of the proposed development subject to 7 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Assistant Planner noted the site's planning history, the policy context, reports received and public submissions made. The key planning issues were seen to be the principle of the development, the visual impact and public health. It was submitted that, given the importance placed on providing modern telecommunications across the country and that the structure has been in place for a significant period, the principle of accommodating the retention could be considered. Acknowledging that a mast has been at this location for over 20 years and that the area is not deemed to be of high landscape value, it was considered that the retention of the mast would not unduly compromise the visual character of the wider area. Reference was made to the residential development to the east and that, in the assessment of the planning application associated with that development, the proximity of units 36-38 to the mast did not factor as a consideration. It was accordingly concluded that the planning authority is satisfied that the retention of the mast does not pose a significant additional threat to the amenity of residents above that which was already in place prior to the purchasing of the neighbouring properties. With reference to public health, the Guidelines for Planning Authorities on Telecommunications and Support Structures were noted and the requirement set out therein to furnish a statement of compliance with the International Radiation Protection Association Guidelines. It was noted that no such documentation had been received and that this would be required by way of further information. A further information request seeking these details was recommended.

Following the receipt of further information the Assistant Planner recommended that permission be granted subject to conditions.

3.2.2. Other Technical Reports

The Environment Section report stated that no attempt was made to assess the health risks voiced by local residents and stated that adherence to licensing limits set down by regulatory bodies governing the operation of telecommunication mast sites are to be observed. There was no objection to the grant of permission subject to a schedule of conditions.

The Area Engineer stated that there were no objections from a roads / area office point of view to the granting of permission.

3.3. Prescribed Bodies

Irish Water had no objection to the proposal.

The Irish Aviation Authority stated that it had no observations on the application.

3.4. Third Party Observations

Objections to the proposal were received from Tarak Ben Amor, Cian O'Mahoney, Con Power, Francois de La Brosse, Flavien Prevost, Salvatore Sittinieri, Siobhan Cahalane, Donal and Muireann O'Reilly, Clodagh O'Flaherty, and Kevin Burke. The grounds of the appeal and the observations made to the Board reflect the principal issues raised.

4.0 Planning History

The Assistant Planner set out a schedule of the planning history associated with the appeal site. The most recent planning application, P.A. Ref. 11/4768, was for permission for the retention of the 30m telecommunications support structure, antennae, link dishes, associated equipment containers and security fence. Permission was granted in June 2011 for a period of seven years from the date of the Order.

5.0 Policy Context

5.1. Cork County Development Plan 2014-2020

Telecommunications Infrastructure

Objectives include:

ED 7-1: Telecommunications Infrastructure

Support the provision of telecommunications infrastructure that improves Cork County's international connectivity.

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".

Have regard to environmental and visual considerations when assessing large-scale telecommunications infrastructure.

ED 7-2: Information and Communication Technology

Facilitate the delivery of a high capacity ICT infrastructure and high speed broadband network and digital broadcasting throughout the County.

Support a programme of improved high speed broadband connectivity throughout the County and implement the National Broadband Strategy in conjunction with the Department of Communications, Marine & Natural Resources.

5.2. Appropriate Assessment

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

5.3. EIA Screening

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

The appellant resides at 37 Glen Dara immediately adjoining the site. The grounds of the appeal may be synthesised as follows:

- The mast is a considerable eyesore and is visually obtrusive.

- The structure is very close to the residential estate and the appellant's house. It should be erected in industrial areas and, if placed close to residential areas, there must be some distance between the mast and houses.
- There is a constant buzzing noise from the mast and the fans of the electric boxes, especially at night.
- It is very dangerous and a health risk to live close to phone masts, especially for young children. According to ICNIRP guidelines, the maximum safe radiation limit should be 20 to 28V/M. The appellant took some radiation measures and the results are way above these limits. The statement of compliance submitted to the planning authority by the applicant should have been provided by an independent, third party agency with new radiation measurements.
- The applicant was carrying out works on the mast before permission was granted retention.
- With the development of another residential estate, 'The Orchard', the mast will be located in the middle and very close to both this and the estate in which the appellant resides.
- The appellant purchased his house under the promise that the mast would not be operated again and eventually removed. While understanding the necessity for it, it should be relocated in a safer location, away from residential units.
- There has been an unauthorised technical use of the mast since July, 2018 as the previous permission has expired since 11/07/2018.

6.2. Applicant Response

The applicant's response to the appeal may be summarised as follows:

Visual Impact, Proximity to Residential Development and Availability of Alternatives

- Telecommunications infrastructure is frequently located in close proximity to residential development, notably in urban areas.

- The purpose of the temporary permission was not to review the situation with regard to new development in the vicinity of the mast and the compatibility of same, but rather to prevent the proliferation of obsolete structures. The increase in residential development in the Watergrasshill area increases the justification for retaining the existing infrastructure as there is an increased demand for services in the area and the population of users has increased.
- There has been telecommunications infrastructure at this location for over twenty years. Loss of the site would create significant coverage and services deficits for the three operators in the area, requiring reconfiguration and possible additional structures in the area.
- To mitigate any perceived negative visual impact, the applicant proposes to landscape around the site in accordance with attached drawings.

Noise, Health and Safety, and Maintenance

- The mast is in use by three operators and would regularly be subject to inspection.
- Complaints relating to noise disturbance were investigated and adjustments were made. Levels never exceeded 65dbA and are therefore acceptable.
- A licence to provide services is subject to compliance with strict emission controls specified by ICNIRP. Regular measurements of emission levels are required. Radio frequency emissions testing was carried out to ensure the equipment on the mast is compliant with international guidelines on exposure to electro-magnetic fields. No breach of limits was found and the installation operates within the limits set by ComReg and ICNIRP. It is thus fully compliant with applicable health and safety legislation.

Conclusion

- The proposed retention, providing for the co-location of operators and adjacent to 38kV lines, is wholly in accordance with the telecommunications guidelines and Cork County Development Plan policy.

The response includes a landscaping proposal, letters comprising technical justification from operators using the installation, and a noise pollution test report for the site.

6.3. **Planning Authority Response**

I have no record of any response to the appeal from the planning authority.

6.4. **Observations**

6.4.1 The observation by Kevin Burke raised concerns relating to the location of the development relative to residential properties, the visual impact, health risks, outdated emissions testing, noise pollution, work taking place at the site when there was no planning permission at the site, and the safety issues for children in the vicinity.

6.4.2 The observation by Con Power raised concerns relating to the location in proximity to houses, health and noise impacts, visual impact, safety, and property value.

6.4.3 The observation by Siobhán Cahalane and John Ryan raised concerns relating to negative health effects, landscape and overbearing impacts, shadow effects, property value, lack of consultation, and noise impact.

6.5. **Further Responses**

In response to the applicant's response to the appeal, the appellant reiterated his concerns and refuted the submission made. The observers Kevin Burke, Siobhán Cahalane and John Ryan, and Con Power refuted matters raised in the submission.

7.0 **Assessment**

7.1. Introduction

7.1.1 I consider that the principal planning issues relating to the proposed development are the proposal in the context of national guidelines, the proposal in the context of the residential development in Watergrasshill, noise impacts, overshadowing, impact on property values, and unauthorised development.

7.2. The Proposed Development in the Context of National Guidelines

7.2.1 I note the *Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities* published in 1996 and Department Circular Letter PL 07/12 of

October 2012. The Guidelines note that location for support structures, antennae and other dishes will be substantially influenced by radio engineering factors and that, in endeavouring to achieve a balance, a number of considerations are relevant. These include visual impact, access roads and poles, sharing and clustering, health and safety aspects, obsolete structures, and the duration of a planning permission.

7.2.2 The following is noted:

- With regard to visual impact, it is referenced that only as a last resort should free-standing masts be located on or in the immediate surrounds of smaller towns or villages. If necessary in such a location, sites already developed for utilities should be considered and masts and antennae should be designed and adapted for the specific location. It is further stated in the Guidelines: *“Only as a last resort and if the alternatives suggested in the previous paragraph are either unavailable or unsuitable should free-standing masts be located in a residential area or beside schools.”* (Section 4.3)
- With regard to access, it is noted that the access road can sometimes cause greater visual impact than the actual installations. (Section 4.4)
- On the matter of sharing facilities and clustering, sharing of installations is promoted as this would normally reduce the visual impact on the landscape. (Section 4.5)
- On the issue of health and safety, operators are required to furnish a statement of compliance with the International Radiation Protection Association (IRPA) Guidelines or the equivalent European Pre-standard 50166-2. The Guidelines further note that the setting up of an independent regulator was pending who would be required to arrange for monitoring of emissions of non-ionising radiation from base station towers and MMDS masts. (Section 4.6)
- On the matter of obsolete structures, the Guidelines note that these should be demolished, removed and the site reinstated. (Section 4.7)
- The Guidelines recommend that temporary, relatively short term permissions of one or two years duration should be avoided but that, because of rapid changes in technology and design, permissions should normally be granted for five years. (Section 4.8)

7.2.3 Circular Letter: PL 07/12 made some revisions to the Guidelines. The Circular included the following:

- Planning authorities are advised that from the date of the Circular letter, attaching a condition to a permission for telecommunication masts and antennae which limit their life to a set period should cease. Only in exceptional circumstances should a permission issue with conditions limiting its life. (Section 2.2)
- 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 additionally be regulated by the planning process. (Section 2.6)

7.2.4 From the outset, the Board will note that this is a planning application for retention of the telecommunications installation. The planning permission associated with the existing installation has withered. Thus, the Board is looking at this application *de novo*.

7.2.5 The above referenced Guidelines and Circular clearly identify the key issues due for consideration with a planning application for telecommunications infrastructure. One of the principal planning considerations relates to 'location'. This is clearly understood to be in the context of assessing the visual impact of telecommunications infrastructure. In again recognising that one is considering this application *de novo*, one must ask the question: Is the proposed telecommunications infrastructure being sited at the appropriate location? While I accept that a telecommunications installation has been located at this site for more than twenty years, it is again first noted that the established installation now has no outstanding planning permission and, secondly, that since the previous grant of planning permission for the retention of that installation there has been significant residential development in the immediate vicinity of this installation and there is further residential development taking place in the immediate vicinity of this site. It is very clear that the context for this proposed development has altered significantly since the original grant of planning permission for a telecommunications installation at this location. It has

developed from being a rural area to now distinctively forming a growing residential suburb of Watergrasshill.

7.2.6 The proposed development is sited as close as one could reasonably attain relative to adjoining houses. The small site abuts the small rear gardens of a number of the houses within 'Glen Dara', including the appellant's house. From a visual impact perspective, this structure has a profound negative visual impact on the nearest adjoining houses, forming a most dominant presence. Unquestionably, in my opinion, there is an unacceptable overbearing impact. In the context of the Guidelines, it is my submission that the siting of this proposed installation is substantially in conflict with the provisions set out. It is stated therein that only as a last resort should free-standing masts be located on or in the immediate surrounds of villages. It is further stated that only as a last resort and if alternatives are either unavailable or unsuitable should free-standing masts be located in a residential area. There has been no attempt to address the issue of alternatives in this application. This installation abuts, and soon will be encircled by, residential estate houses. It could only be understood as having a profound negative impact on the visual amenities of these residential properties. In this context, the proposed development, being considered *de novo*, conflicts with the Guidelines as they relate to the issue of visual impact. This is not a sustainable location for such telecommunications infrastructure.

7.2.7 I note that on matters relating to access and sharing facilities and clustering that there are no impact concerns relating to the access arrangements and that the proposed development seeks to accommodate three operators, in accordance with what is promoted in the Guidelines. On the issue of obsolescence, I note that planning permission for the existing mast on this site withered in July 2018. The installation was not removed. It is acknowledged that matters of enforcement are matters for the planning authority and not the Board.

7.2.8 With regard to the issue of public health, the Circular Letter is very clear. Planning authorities and the Board are to be primarily concerned with the appropriate location and design of telecommunications structures. These authorities do not have competence for health and safety matters in respect of telecommunications infrastructure as they are regulated by other codes. The applicant has provided required details on compliance with the ICNIRP Guidelines. It is reasonable to

conclude, based on the direction given by the Circular and the details provided by the applicant, that the Board could not offer further considerations relating to the health impacts arising from non-ionising radiation emitted by the proposed installation. With regard to general public health and safety arising from unauthorised access onto the site and the concerns raised by observers for children accessing the site, I note the fenced nature of the site and consider that reasonable measures to curtail unauthorised access are provided for.

7.2.9 Overall, I acknowledge again the emphasis placed by the Circular Letter on the duty of planning authorities to be primarily concerned with the appropriate location and design of telecommunications structures. Assessing this proposal *de novo*, one could only reasonably conclude that this telecommunications installation conflicts with the guidance set on in the Guidelines on the appropriate location for such development in the context of visual impact.

7.2.10 Finally, if in the event of the Board deciding to grant permission for the proposed development, I note again the above referenced Circular Letter. There is a clear emphasis placed on ceasing the attachment of a condition to a permission for telecommunication masts and antennae which limit their life to a set period and that only in exceptional circumstances should a permission issue with conditions limiting its life. The location within which the proposed development is sited is a rapidly expanding residential area. Any permission that would issue should be of a temporary nature as these are exceptional circumstances because the encroachment of residential properties on this isolated and confined site continues in the immediate term.

7.3. The Proposal in the Context of Residential Development in Watergrasshill

7.3.1 I first note that there is no dispute that telecommunications infrastructure has been at this site for more than twenty years. It is also observed that, notwithstanding the existence of this infrastructure, residential development has proceeded to be developed and occupied in the immediate vicinity of this installation. Clearly, this has been planned for and has occurred in the knowledge that the installation was in existence adjoining such residential schemes. Furthermore, it is apparent that this location is one undergoing continued expansion as further residential development is

under construction immediately adjoining this site to the south. While it may be argued that properties were developed and houses were purchased with the understanding that telecommunications infrastructure was located in the immediate vicinity, one must now note that this application is required to be assessed *de novo* with the withering of previous planning permissions and one must offer due regard to the national guidelines on such proposed development.

7.3.2 I note the provisions of the Fermoy Municipal District Local Area Plan 2017 within which Watergrasshill is designated a 'Key Village'. The site of the proposed development lies on the south-western boundary within the designated 'Settlement Boundary'. There are no specific development objectives relating to this site or to adjoining lands within the settlement boundary nor are there specific zoning provisions for this site. The plan has an objective to encourage the development of up to 108 houses in the plan period within the village's development boundary. It is clear that the land area in the immediate vicinity of the telecommunications infrastructure site is targeted as being one of the primary development areas within the village to accommodate the residential growth that is planned for. It is, therefore, clear that the site of the proposed development is no longer isolated and separated from the village of Watergrasshill within a rural area. It is evident that this location is going to be subject to more residential development in the immediate term. In this context, the proposed development would be wholly located within a residential area. The adverse visual impacts of such a support structure, antennae and link dishes in such a context cannot be ignored. This again demonstrates the inappropriate location of this proposed development.

7.4. Noise Impacts

7.4.1 It is apparent from the applicant's response to the appeal that this site has been subject to complaints arising from noise disturbance, that tests were carried out, and that adjustments were made. The functioning of such an installation will inevitably produce noise that would be audible beyond the site boundaries. The noise nuisance arising from the siting of such an installation in such close proximity to the rear of two-storey houses is likely to compound the adverse effects arising from this siting

and to reinforce the view that this constitutes an unsustainable location for an incompatible use.

7.5. Overshadowing

7.5.1 I note that the proposed development is contained within a fenced site and that block walls constitute the rear boundaries of the houses in 'Glen Dara'. The potential impact from the development on this site would relate to the mast, antennae and link dishes and not to the equipment containers at ground level. I note that the mast structure is located immediate west / south-west of rear gardens of a number of houses located at the southern end of 'Glen Dara' estate. The 30m high mast would be just over 10 metres from the rear garden boundary of houses at the nearest point. There is potential for the structure to cast shadow in evening sunlight onto the gardens of the neighbouring houses. It is my submission that this would likely be a limited impact over very short periods, albeit that such additional effects could be understood to exacerbate the experiences of the proximity of the structure and its consequential overbearance for these nearest residents.

7.6. Impact on Property Values

7.6.1 Once again considering this application *de novo*, I am of the opinion that the proposed development could reasonably be viewed as having a likely adverse impact on property values. This is premised upon determining that if an unsightly structure of this scale and close proximity was not located immediately to the rear of residential properties one would take a reasonable view that the houses would be considered to be of more value than if such a structure is in place.

7.7. Unauthorised Development

7.7.1 It is apparent that planning permission withered in July 2018 for the existing telecommunications infrastructure on this site. As a consequence, what is sited at this location is now without planning permission. The matter of enforcement is one for the planning authority.

8.0 Recommendation

- 8.1. I recommend that permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

The site of the proposed development is located within the settlement boundary of the village of Watergrasshill immediately adjoining established residential development and lands being developed for housing. In accordance with the "*Telecommunications Antennae and Support Structures - Guidelines for Planning Authorities*", published by the Department of the Environment and Local Government in July, 1996, it is a requirement, with regard to visual impact, that only as a last resort should free-standing masts be located on or in the immediate surrounds of villages and that only as a last resort and if alternatives are either unavailable or unsuitable should free-standing masts be located in a residential area (Section 4.3). It is considered that the proposed development would constitute a highly obtrusive development immediately abutting established housing within the village of Watergrasshill, would have a significant overbearing impact on adjoining residential properties, would contribute substantially to the erosion of the visual amenities of residents at this location, and would, therefore, conflict with the locational requirements of the Guidelines. The proposed development would, thereby, be contrary to the proper planning and sustainable development of the area.

Kevin Moore
Senior Planning Inspector

26th September 2019