



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306646-20

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<b>Development</b>	Retention Permission of the existing telecommunications equipment container together with associated equipment and fencing at the Athgarvan 38kV substation. The development forms part of SIRO Limited broadband telecommunications network,
<b>Location</b>	Crotanstown Road , Walshestown , Newbridge
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	191278
<b>Applicant(s)</b>	Siro Limited
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Siro Limited.
<b>Observer(s)</b>	James and Maria Cox.

**Date of Site Inspection**

1<sup>st</sup> May, 2020.

**Inspector**

Stephen Kay

## **1.0 Site Location and Description**

- 1.1. The appeal site is located within the existing Athgarvan ESB sub station site to the south of Newbridge and close to the M7. The site is accessed off a local road that runs under the M7 to the south of the appeal site. The substation comprises a control building and ancillary infrastructure including pylons and is located within a site that is partially screened by hedgerows and trees.
- 1.2. The appeal site comprises the north western part of the overall sub station compound comprising the area closest to the road. There is a telecommunications cabinet located adjacent to the roadside boundary at the northern end of this frontage and this cabinet and the balance of the frontage is characterised by a concrete post and rail fence. Immediately to the north east, is an entrance and driveway to a residential property located to the south east of the appeal site
- 1.3. The stated area of the site is 0.0009 ha.

## **2.0 Proposed Development**

- 2.1. The development which is the subject of this appeal comprises the retention of a telecommunications equipment container and surrounding fencing which is located at the north east corner of the ESB sub station site and for the retention of the post and rail fencing located along the road frontage. The stated area of this container is 9 sq. metres and it has dimensions of 3 metres width by 3 metres in depth and 3 metres in height.
- 2.2. Access to the site is via the existing access to the Athgarvan sub station which is located c.45 metres to the south west of the site. A right of way from this existing vehicular access to the compound containing the equipment container is indicated on the submitted plans.
- 2.3. The site on which the equipment is located is stated to be in the ownership of the ESB.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was refused for a single reason that notes the location of the site is a highly visible and prominent location and that having regard to the availability of alternative locations within the overall landholding, to the absence of appropriate hedgerow screening along the roadside boundary and use of inappropriate fencing, the relationship of the container to the entrance to the adjoining residential property, it is considered that the proposed development would seriously injure the visual and residential amenities of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the planning officer notes the relevant development plan policy, the highly visible nature of the development and its proximity to an adjacent residential property. The principle of siting the equipment within the sub station site is considered appropriate however the location is so prominent and visible is considered inappropriate particularly given the removal of the previous fencing and hedging and inappropriate replacement boundary. The development is considered to be highly visible and obtrusive and such as would seriously injure the visual and residential amenities of the area.

#### 3.2.2. Other Technical Reports

Environment Department – No objection subject to conditions.

Transport – No objections.

Water Services – No objections.

Fire Officer – No objections.

### 3.3. Prescribed Bodies

None on file.

### 3.4. Third Party Observations

Objection to the proposed development received from the owner of the adjoining residential property to the east. The main issues raised in this objection can be summarised as follows:

- Unauthorised development,
- Failure to implement previous agreements,
- Contrary to the proper planning and development of the area,
- Inappropriate siting and inadequate screening leading to adverse impact on visual amenity.
- Inadequate consultation.

### 4.0 Planning History

Current enforcement case relating to the development on site.

Kildare Co. Co. Ref. 08/1697; ABP Ref. PL09.234214 – Permission granted by the Planning Authority and refused on appeal for the erection of a 20 metre high free standing wooden pole type communication structure, antennae and communication equipment and ground mounted cabinets to be shared by a number of operators. Permission refused for reasons relating to the proximity of the development to the existing residential and educational facilities in the area and resulting conflict with the provisions of the DELG Guidelines on Telecommunications Antennae and support structures (1996) and with the Newbridge LAP which has objectives to prohibit such structures in the vicinity of schools or residential areas.

Kildare Co. Co. Ref. 05/236 – Permission granted by the Planning Authority for the development of a 38Kv control and switchgear building, transformer bases and bunding and relocation of existing ESB radio communications timber pole, fencing and associated site works. .

## 5.0 Policy Context

### 5.1. Development Plan

The appeal site is zoned Objective 'I-Agriculture' under the provisions of the *Newbridge Local Area Plan, 2013-2019* which has been extended to 2021. Utility structures are identified as a use that is '*open for consideration*' on lands so zoned.

There are a number of policies contained in the *Kildare County Development Plan, 2017-2023* which are generally relevant to the form of development the subject of this appeal. These are contained under section 8.13 and include:

**Policy TL1** which states it is policy to support national policy for the provision of new and innovative telecommunications infrastructure.

**Policy TL6** states it is policy to '*achieve a balance between facilitating the provision of telecommunications infrastructure in the interests of social and economic progress and sustaining residential amenity and environmental quality*'.

**Policy TL7** states that it is policy to '*ensure that the location of telecommunications structures minimises and / or mitigates any adverse impacts on communities, public rights of way and built or natural environment*'.

Chapter 17 (section 17.11.3) relates to development management standards and in the assessment of applications for telecommunications infrastructure seeks to ensure that (inter alia) '*the preservation of residential and visual amenities is considered*'.

### 5.2. Natural Heritage Designations

The closest European site to the appeal site is Pollardstown Fen SAC which is located c.2.5 km to the north west.

### 5.3. EIA Screening

Having regard to the nature and scale of the development for which retention permission is sought, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The following is a summary of the main issues raised in the first party grounds of appeal:

- That the first party SIRO is a joint venture company between the ESB and Vodafone. Stated that the site which is the subject of appeal is held under licence from the ESB but the overall land holding outlined in blue on the maps accompanying the application remains exclusively under the control of the ESB and SIRO has no rights to these lands.
- That a determination was made by the council that the development was not exempt under Class 31(e) of the Regulations on the basis that it was within less than 10 metres of the curtilage of a house. This is disputed as the site is c.150 metres from the actual house adjoining the site.
- The Board is requested to have regard to the exempted development provisions of the regulations in assessing the case.
- The application for retention and this appeal has been made entirely without prejudice to the SIROs reliance on the exempted development provisions of the legislation which it considers benefit this development.
- Contended that the exempted development status of the site relates not just to class 31(e) but also to a range of other provisions including 4(1)(g) and 4(1)(h) of the Planning Act and Classes 21, 26, 31(a) and 48 of Part 1 of Schedule 2 of the Regulations.

- That the appeal site is located within an existing established and authorised use which has an industrial character. The container in question is a modestly scaled structure that is consistent with the character of the sub station building.
- That the Planning Officer report acknowledges that the principle of the location within the sub station compound is appropriate.
- That a detailed analysis was undertaken to identify the optimum location including minimum separation distances from the sub station for health and safety considerations, access to electricity connections and minimising impact on the operation of the sub station. Submitted that this is the only location on the site where the facility could be provided.
- That the location was also informed by a Visual Impact Appraisal.
- That the statement of the Planning Authority that it is possible to relocate the container within the ESB site does not pay sufficient regard to the complexity and inter connectedness of the sub station.
- That a line of hawthorn saplings have been planted along the site frontage and will in time provide a dense screen.
- In addition to this, it is now proposed that a mature hedgerow boundary of beech, field maple, hornbeam and hawthorn would be erected along the full frontage of the site. This hedge would be the subject of a management programme and maintained at a height of 1.5 metres. SIRO is happy to accept any condition regarding this boundary planting that the Board may impose.
- It is proposed that this new boundary treatment would extend as far as possible around the boundary of the site in the vicinity of the adjoining residential entrance to protect residential amenity.
- That the concrete post and rail fence was erected to provide adequate security.
- That the revised proposals for the boundary would address the concerns of the council with regard to visual amenity and depreciation of property values.



The beneficial impact of broadband availability on house prices should be recognised in this regard.

- That the development is consistent with the provisions of the development plan regarding the promotion of broadband infrastructure, specifically section 8.13 and Policy TL2 of the *Kildare County Development Plan, 2017-2023*.

## 6.2. Planning Authority Response

A response from the planning authority to the grounds of appeal was received on 16<sup>th</sup> March, 2020. The following is a summary of the main issues raised in the first party grounds of appeal:

- That the development does not comprise exempted development under 31(e) as it is within 10 metres of a residential property and Class 31(a) does not apply as it does not permit the construction of the cabinet structure overground or the removal of the hedgerow boundary.
- That no detailed analysis or justification as to why the structure could not be located within the body of the site has been provided.
- That the planning authority does not dispute the merits of co locating the development within the sub station site however no rationale of any kind is provided for removing the boundary. The previous hedgerow boundary largely screened the sub station however this has now been removed and the site is much more visible.
- Noted that two of the four replacement planting species proposed are not listed in the list of appropriate species as per Table 17.2 of the development plan.
- Considered that the concrete post and rail fencing is unattractive and inappropriate in a semi rural area and is not similar to the fencing to stud farms as contended by the first party.

### 6.3. Observations

An observation has been received from James and Maria Cox who are residents in the vicinity of the appeal site. The following is a summary of the main issues raised in this submission:

- That the applicants failed to submit and technical reports or maps of cables that support their contention that the current location is the best location available. Rather it is the most financially beneficial location for Siro while having the most visual impact for neighbours and locals.
- That the appeal submission made goes to considerable detail about the lengths that they are prepared to go to screen the suite with the addition of a hedge. The proposals for screening have only followed refusal of permission and it is doubted that they will implement the proposals.
- That attempts to discuss the issue with representatives of Siro have been unsatisfactory.
- That the proposed boundary is not part of the original application and it is doubted that the planting proposals will be implemented.
- The cabinet has been installed within 4.5 metres of the entrance to the observer's home. It is located in a very visually prominent location.
- That the hedge removed at this location was not very high quality but provided hugely more screening than the replacement concrete post and fencing and hawthorn sapling hedge that will take 10 years to mature.
- That the photos indicated in the appeal are of poor quality.
- That the conclusion of Kildare County Council that the proposal would devalue properties in the area is agreed with as is the conclusion that the development is contrary to the proper planning and sustainable development of the area.

## 7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this case:

- Zoning and Principle of Location Proposed
- Impact on Visual and Residential Amenity
- Other Issues
- Appropriate Assessment

### 7.2. Zoning and Principle of Location Proposed

7.2.1. The appeal site is located on lands that are zoned Objective 'I-Agriculture' under the provisions of the *Newbridge Local Area Plan, 2013-2019* (as extended to 2021).

Utility structures are identified as a use that is '*open for consideration*' on lands so zoned and the principle of the proposed development is therefore consistent with the zoning of the site.

7.2.2. I note that there are a number of general policies contained in section 8.13 of the Kildare County Development Plan which are supportive of the principle of telecommunications infrastructure and which are in my opinion supportive of the general form of development proposed. These include Policy TL1, which states it is policy to support national policy for the provision of new and innovative telecommunications infrastructure and Policy TL2 which states that it policy to '*promote and facilitate the provision of an appropriate telecommunications infrastructure, including broadband connectivity and other technologies within the county*'.

7.2.3. As noted in the first party appeal, the existing site is characterised by the presence of a 38 Kv sub station and therefore has an industrial character and appearance. The principle of the siting of the proposed development within such a site is in my opinion appropriate and such that it would be assimilated into the existing structures on the site. That the Planning Officer report acknowledges that the principle of the location within the sub station compound is appropriate.

- 7.2.4. With regard to the potential for the relocation of the compound within the wider sub station site, I note the comments made in the appeal to the effect that SIRO is a joint venture company between the ESB and Vodafone and that while the site which is the subject of appeal is held under licence from the ESB, the overall land holding outlined in blue on the maps accompanying the application remains exclusively under the control of the ESB and SIRO has no rights to these lands. While the site may be the subject of a specific lease or licence from ESB such that a revised location would require a new agreement, given the fact that ESB is a partner in SIRO I consider that the appeal overstates the obstacle that this would present to a revised location for the development the subject of the current appeal.
- 7.2.5. Similarly, I note the issues raised by the first party regarding the limitations on the siting of the telecommunications compound having regard to safety issues, the availability of power connections and a need to avoid a negative impact on the overall operation of the sub station. While the detailed analysis stated in the appeal regarding siting may have been undertaken, and that the result of the analysis is that the appeal site is the only location on the sub station site where the facility could be provided, no significant details of this analysis have been presented with the application or now as part of the appeal. Taken in conjunction with the comments in the first party appeal regarding the lack of any alternative sites, I do not consider that the first party has presented a very strong case as to why the appeal site is the only location feasible within the sub station lands and why a location further removed from the roadside boundary that would have facilitated the retention of the original roadside planting could not have been selected. Notwithstanding this, section 7.3 of this assessment considers the appropriateness of the existing location subject to the landscaping mitigation measures proposed in the first party appeal.
- 7.2.6. The first party appeal makes a number of points regarding the potential exempted development status of the development, the fact that the determination issued by the Planning Authority (s.5) is disputed and that the Board is requested to have regard to the exempted development provisions of the regulations in assessing the case. These points are noted, however the first party has not requested the Board to undertake a review of the s.5 declaration issued and it falls on the Board to determine the case on its merits having regard to the proper planning and development of the area and relevant local and national policy.

### 7.3. Impact on Visual and Residential Amenity

- 7.3.1. There are a number of policies contained in the Kildare County development Plan that are relevant to the assessment of the visual impact of the development undertaken. These include Policy TL6 which states that it is policy to *'achieve a balance between facilitating the provision of telecommunications infrastructure in the interests of social and economic progress and sustaining residential amenity and environmental quality'* and Policy TL7 which states that it is policy to *'ensure that the location of telecommunications structures minimises and / or mitigates any adverse impacts on communities, public rights of way and built or natural environment'*.
- 7.3.2. The development as constructed is located in a very visually prominent position close to the road and such that in my opinion, when taken in conjunction with the removal of the existing vegetation which previously afforded screening, results in a development that has a significant negative impact on the visual amenity and character of the area. I acknowledge the fact that the removal of the roadside hedgerow and planting cannot be reversed and that proposals have been submitted with the appeal for the replacement of this boundary. These replacement planting proposals will however take a significant period to mature and I return to the fact that the first party has not in my opinion provided a clear justification for the location chosen. The actions undertaken have not just resulted in the telecommunications equipment being added but also in the existing sub station infrastructure being significantly more visible from the public road. The first party appeal states that the location of the telecommunications equipment was informed by a Visual Impact Appraisal, however no details of this assessment are provided as part of the appeal.
- 7.3.3. The assessment of this case comes down to consideration of whether the lack of a clear operational or visual justification for the location chosen outweighs the fact that the development is existing and roadside boundary has been removed significantly altering the visual amenity and character of the area for the negative. The frustration of the third party observers regarding the lack of justification for the approach followed is understandable, however refusal of permission will result in the disruption to the infrastructure and the issue of the boundary will remain. In the circumstances, it is my opinion that the most appropriate course of action is for retention permission

to be granted subject to conditions requiring the submission of landscaping proposals along the boundary for the agreement of the Planning Authority. Such an approach will result in retention of the telecommunications service while ensuring that the development which is the subject of the current application and the wider sub station site is better screened from the public road. The concerns expressed by the Planning Authority with regard to the species mix proposed to be used in the landscaping plan submitted as part of the appeal, and specifically the use of non native species, are noted and it is therefore recommended that a condition requiring the submission of revised landscaping proposals would be submitted for the agreement of the planning authority.

#### **7.4. Other Issues**

- 7.4.1. Access to the site is proposed to be via the existing entrance to the site compound located to the south west of the installed equipment. The nature of the development is such that no significant additional traffic movements would be generated and visibility at the site access is good in both directions.
- 7.4.2. The nature of the infrastructure installed and the degree of separation to the closest residential properties is such that there would be no negative impacts on residential amenity by virtue of noise or other disturbance.

#### **7.5. Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be granted based on the following reasons and considerations and subject to the attached conditions.

## 9.0 Reasons and Considerations

Having regard to the design and scale of the development, to its location relative to surrounding residential properties and to the proposals for the screening of the site and the roadside boundary, it is considered that that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience.

## 10.0 Conditions

1. The development shall be retained in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 13<sup>th</sup> day of February, 2020, 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 comprehensive boundary treatment and landscaping scheme shall be submitted to the planning authority for written agreement within 3 months of the date of this decision. This scheme shall include the following:-

(a) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species;

(b) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme and in the first planting season following agreement. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from planting shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of visual amenity.

3. Within three months of the date of this permission, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of the reinstatement, including all necessary demolition and removal. The form and amount of the security shall be agreed between the planning authority and the developer, or in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory reinstatement of the site.

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

**Reason:** In the interest of public health.



5. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Stephen Kay  
Planning Inspector

21<sup>st</sup> May 2020