



An
Bord
Pleanála

Inspector's Report

ABP-308319-20

Development	21.1m high multi-user monopole telecommunications equipment
Location	Rathangan FC, Canal Road, Rathangan Demesne, Rathangan, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	20/768
Applicant(s)	Shared Access Ltd.
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party v Grant of Permission
Appellant(s)	Michael Hoey
Observer(s)	None
Date of Site Inspection	08.12.2020
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located in the southern area of Rathangan town in west Co. Kildare.
- 1.2. The site is located along the south eastern boundary of the sports grounds, adjacent to the club house building and gravel surfaced car parking area. There is ball netting along the southern boundary. There are industrial buildings to the north east and south west and agricultural land to the south.
- 1.3. The site has an area of 0.00525 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for a 21.1 metres high multi-user monopole carrying telecommunications equipment together with associated exchange cabinets and associated site development works.
- 2.2. In addition to standard planning application plans and particulars the application was accompanied by a 'Planning Statement Incorporating Environmental Considerations' and a 'Telecommunications Development Photomontage Report'.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Permission was granted by Kildare County Council subject to eight conditions including removal in the event of obsolescence, no material change of use, landscape screening of the compound, surface water disposal and hours of construction.

3.2. Planning Authority Reports

- 3.2.1. The Council's Planning Report considers that, having regard to the location, siting and design and to the provisions of the Kildare County Development Plan 2017-2023, Telecommunications Antennae and Support Structures Guidelines and Circular Letter PL 07/12, the proposed development is acceptable.

3.2.2. **Other Technical Reports**

Area Engineer – No objection subject to conditions.

Environment Section – No objection.

Water Services – No objection.

Heritage Officer – No objection or further comment.

3.3. **Prescribed Bodies**

Irish Water – No objection. Observations made.

3.4. **Third Party Observations**

3.4.1. One submission was received from Michael Hoey. The issues raised are generally similar to those referenced in the grounds of appeal but also include:

- The address on the submission is in Crann Nua, Portarlinton, Co. Laois but the submission states the proposed development is adjacent to and directly in line with the appellant's home and property at 133 Mullentine, Rathangan.
- The application does not form part of the National Broadband Plan and the €80 application fee benefits the applicant in error by a waiver or reduction in fees. Therefore, the application is invalid. The development is inconsistent with the National Broadband Plan.
- The application is not future proofed, will not resolve the deficiencies in the service claimed but will increase radiation exposure causing a public health risk and prolong government commitment to a full rollout of fast speed cabled fibre optic service.
- The development will impede future development of the soccer club's facilities.
- The application caters for only one provider.
- Insufficient data provided to support the contention that there is a deficiency in the service currently being provided.
- Drawings show 5G equipment for future installation. The public notices and application are misleading.

4.0 Planning History

4.1.1. None.

5.0 Policy Context

5.1. Kildare County Development Plan 2017-2023

5.1.1. Volume 1 of the Plan

Section 8.13 (Energy & Communications – Telecommunications Infrastructure) contains 11 no. telecommunications policies.

Development of the type proposed is also addressed in Section 17.11.3 (Development Management Standards – Energy and Communications – Telecommunications and Supporting Infrastructure).

5.1.2. Volume 2 of the Plan

Rathangan is specifically considered in Volume 2 Section 1.7 (Small Towns & Environs Plans – Rathangan Small Town Plan).

The site is in an area zoned 'F: Open Space and Amenity' in the Rathangan Land Use Zoning Objectives map. The zoning objective is 'To protect and provide for open space, amenity and recreation provision'. The aims of this land-use zoning objective are 'to protect recreation, open space and amenity areas, to maintain and improve amenity lands, to preserve private open space and to provide recreational facilities'. Utility structures are open for consideration on this zoning.

Section 1.7.8.6 (Energy and Communications) states the Council seeks to facilitate the enhancement of telecommunications infrastructure in the town. Objective RN 39 states that it is an objective of the Council to 'Promote the expansion of broadband, along with the concept of wi-fi and wireless technology...'

5.2. **Telecommunications Antennae and Support Structures Guidelines for Planning Authorities, 1996**

5.2.1. These guidelines, and the subsequent Circular Letter PL 07/12, are relevant to applications for telecommunications structures.

5.3. **Natural Heritage Designations**

5.3.1. The closest Natura 2000 site is River Barrow and River Nore SAC approx. 8.7km to the south west. The closest heritage area is Grand Canal pNHA approx. 180 metres to the north.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The grounds of appeal were submitted by Michael Hoey with an address in Crann Nua, Portarlinton, Co. Laois. The main points made can be summarised as follows:

- The planner is relying on the 1996 Dept. of Environment Guidelines and Circular Letter PL 07/12 to avoid complying with the requirements of the EIA directive. In *Maier v An Bord Pleanála* [1999] IEHC 155 the judge stated that in addition to circumstances where EIS is mandatory by reason of its falling within a class or exceeding a specific threshold in the 1989 Regulations, the 1994 Regulations make provision for the submission of an EIS where the planning authority, or the Board on appeal, forms the view that the proposed development would be likely to have significant effects on the environment. The case also established that a directive cannot be transposed by Ministerial order. A Ministerial order such as the 1996 guidelines or 2012 circular letter cannot and did not give effect to the EIA Directive or Habitats Directive.
- Certain characteristics of the project, the location of the project and the type and characteristics of the potential impact as set out in Annex III of the EIA Directive must all be established, considered and assessed for this project before consent (not planning permission) can be given. The nature of the

decision (planning permission) is not development consent in the context of the SEA and EIA directives, both of which apply to the County Development Plan. This proposal would be a change to the plan for which an EIA or SEA was required. Annex II of the EIA Directive includes (13)(a) which states 'Any change or extension of projects, listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)'. The planner failed to consider or comply with Annex III of the Directive. Article 4 of the Directive states that 'Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account'.

- It is incorrect to state there is no relevant planning history. The application is attempting to replace a mast that existed on the adjoining site which was removed because of its proximity to the school and playing fields for public health and sustainable development reasons. Its location is marked on a map submitted with the grounds of appeal. Moving a structure which was impacting on a post-primary school age group to a location where it potentially exposes/increases exposure to all age groups cannot be justified.
- The decision attempts to dispense with due process to exhaust all alternatives. The applicant has no obligation to provide any service in this area. The need for the development has not been established, particularly in the context of the National Broadband Plan. The principle of the development at this location is unacceptable and conflicts with the land use zoning objectives. The Local Area Plan clearly stipulates that only as a last resort when all other alternatives have been exhausted should free standing masts be located in residential areas or close to schools and hospitals. This reflects the DoE guidelines. In this case real alternatives were not presented by the applicant, considered or exhausted by the planner.
- The development will introduce and emit radiation. No data or evidence is included to identify and describe the receiving environment. Article 6(3) of the Habitats Directive requires that plans or projects likely to have a significant

effect on an area of conservation are subject to an assessment of their implications in view of the conservation objectives. The proximity of the Grand Canal requires full compliance with both the EIA and Habitats directive. The planner is not entitled to ignore the requirements of the EIA and Habitats Directives, denying the public their European protective right to participate in the decision making process. In dismissing the EIA and Habitats directive a misconception is being repeated which was resolved in C-392/96 Commission v Ireland which clarified the proper workings of the EIA directives. The mast is a project likely to have significant effects on the environment by virtue of its nature because of the generation and emission to the air of radiation. The application is also invalid because of the failure to submit an EIS along with a NIS and the decision is legally flawed because the planner failed to request either or both. National Parks & Wildlife was not notified of the proposal which is responsible for assessing impacts on our biodiversity.

- The decision to grant permission was made without notifying or consulting the Health Officer or Dept. of Health. There is no evidence or data to support the conclusion the development is acceptable. The planning authority is obliged to establish and assess the health effects.

6.2. Applicant's Response

The main points made can be summarised as follows:

- The planning application fee of €80 has nothing to do with the National Broadband Plan.
- The applicant considered five alternative sites prior to putting forward the subject planning application site.
- The intended user is Eir though equipment is shown on the pole for a second user, to provide co-location and future proof.
- The location does not impede on sports activities or sports facilities.
- The proposal is for 3G and 4G wireless broadband services but is capable of supporting future technologies.

- The proposal is not within EIA Directive Annex I or Annex II or the Planning & Development Regulations, 2001 (as amended). In relation to Annex III developments, the proposal is not considered to have any significant impacts considering Schedule 7 criteria, to warrant the planning authority requesting a screening report under Article 103 of the 2001 Regulations. The environmental considerations of the applicant's Planning Statement concluded that there were no significant impacts.
- A letter accompanying the applicant's response, prepared by Dr. Patrick Crushell of Wetland Surveys Ireland Ltd., states that, considering the characteristics of the proposed development and the distance from European sites, there is no potential direct, indirect or cumulative impacts of significance on any European site and a Stage 2 Appropriate Assessment is not required. Dr. Crushell also considers the development is sufficiently removed from the Grand Canal pNHA that no potential significant ecological effects are foreseen.
- There is a line of mature trees along the western boundary of the sports grounds and the site is close to two industrial estates, which help to partially screen the development. There are also trees along the northern boundary of the sports grounds. The proposal is seen in connection with the industrial buildings and not in isolation. A visual assessment was contained within the planning application. The change in the landscape is minor/not significant.
- Compliance with emission limits is regulated by the Commission for Communications Regulations. Circular Letter PL 07/12 reiterates that planning authorities do not have competence for health and safety matters in respect of telecommunications structures. Health impacts are not a material consideration in the determination of this third party appeal.

6.3. Planning Authority Response

- 6.3.1. In assessing the application due regard was given to the County Development Plan 2017-2023, the planning history, internal reports and reports of the prescribed bodies and the proper planning and sustainable development of the area. The planning

authority has no further comment or observation to make. The Council requests the Board upholds its decision.

6.4. Observations

6.4.1. None.

6.5. Further Responses

6.5.1. None sought.

7.0 Assessment

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

- Zoning
- Kildare County Development Plan 2017-2023 Policy
- Public Health
- EIA

7.1. Zoning

7.1.1. The site is in an area zoned 'F: Open Space and Amenity' in the Rathangan land use zoning objectives map in the County Development Plan 2017-2023. Among the land uses open for consideration on this zoning is 'utility structures'. Uses that are open for consideration may be acceptable in circumstances where the Council is satisfied that the proposed use would not conflict with the general objectives for the zone and the permitted or existing uses as well as being in the interests of the proper planning and sustainable development of the area.

7.1.2. Given that the proposed telecommunications development would not conflict with the general objectives for the open space and amenity zoned land I consider that there is no concern with the provision of the structure at this location in terms of land use.

7.2. Kildare County Development Plan 2017-2023 Policy

7.2.1. The policies of Kildare County Council are set out in Section 8.13 (Telecommunications Infrastructure) of the Plan. Section 17.11.3 (Telecommunications and Supporting Infrastructure) outlines what should be included in planning applications for new facilities. Both sections state that the planning authority will have regard to the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (1996) and other relevant publications.

7.2.2. The proposed development is consistent with a number of policies. Policy TL 1 supports national policy for the provision of new telecommunications infrastructure and recognises it is a key component of economic prosperity and social development. Policy TL 2 promotes and facilitates appropriate telecommunications infrastructure. The applicant's Planning Statement states the proposed structure is a replacement for the existing Eir antennas located at Rathangan Church of Ireland. The proposed development allows for co-location on the proposed structure with another operator in addition to Eir. This is consistent with Policies TL 8 and TL 10. Policy TL 9 sets out areas where masts and antennas will be minimised i.e. areas of high amenity/sensitive landscape areas, areas within or adjoining the curtilage of protected structures and on or within the setting of archaeological sites. The development affects none of these areas.

7.2.3. The site is zoned open space and amenity and is immediately adjacent to two industrial estates and land zoned for light industry and warehousing. In relation to Policy TL 6, given the approx. 200 metres separation distances to residential areas I do not consider there will be any impact on residential amenity. The Grand Canal is approx. 180 metres away. A letter from Dr. Patrick Crushell, Principal Ecologist with Wetland Surveys Ireland Ltd. was submitted with the applicant's response to the grounds of appeal. Dr. Crushell considers that the development is "sufficiently removed from the Grand Canal pNHA that no potential ecological impacts of significance are foreseen". I consider this is acceptable having regard to Policy TL 6. In relation to visual impact

and the built and natural environment (Policy TL 7), I do not consider there would be any significant issue. I consider that the Photomontage Report does not raise any concerns in relation to the visual impact of the proposed development.

- 7.2.4. Section 17.11.3 outlines what planning applications should include, such as details of the significance of the development to the telecommunications network, a technical explanation as to why coverage cannot be provided by existing antennae, efforts made to share, co-locate or cluster with existing structures, consideration of alternative sites and visual impact.
- 7.2.5. The confirmed occupier of the site is Eir and there is provision for a second user to co-locate. The applicant's report states that there is currently 'a completely unsatisfactory wireless broadband service provided in this part of the county for Eir'. Eir considers there is an urgent requirement for wireless broadband services in the area to improve overall network coverage. It is stated that the proposed height is the minimum height required to allow more advanced technologies to be accommodated and for covering the proposed target coverage area.
- 7.2.6. A technical justification is set out in Section 4 of the submitted report. The site is approx. 720 metres south of the site to be decommissioned at the Church of Ireland. The applicant states that, 'following a comprehensive search of the target search area, no other suitable existing base station options were identified that could be shared or upgraded to provide the necessary coverage required'. Building the proposal is considered the only way to provide suitable radio coverage.
- 7.2.7. Five possible alternative locations were investigated: Noone Engineering, Cross Agricultural Engineering, Rathangan GAA, Honorview Ltd. and Kilinkenbergh. The applicant states that reasons these potential alternative sites were discounted range from the landowner having alternative plans to develop the site or not wishing to engage to visual issues relating to proximity to a church and the site not working for the mobile operator. There was no suitable structures or masts identified which would be capable of providing both the required transmission links and the level of coverage required.
- 7.2.8. The Plan states that free-standing masts should be avoided in the immediate surrounds of small towns and only as last resort when all other alternatives have been exhausted should free standing masts be located in residential areas or close to

schools and hospitals. The subject site is in a zoned area on the outskirts of Rathangan. While it is zoned 'open space and amenity', it is immediately adjacent to light industrial units and a similarly zoned area. The boundary of a post-primary school is approx. 100 metres to the east and the school buildings themselves are approx. 200 metres to the north east.

- 7.2.9. Having regard to the foregoing, I consider that the proposed development is consistent with the provisions of the Kildare County Development Plan 2017-2023. I am satisfied the proposed development is justified and the proposal to facilitate an additional operator is consistent with Council and national policy. I consider the visual impact of the proposed development would be low and there are no structures of built heritage value that would be affected. I consider the structure is a sufficient distance from the post-primary school and the Grand Canal. I consider the proposed development to be acceptable in the context of the Kildare County Development Plan 2017-2023.

7.3. Public Health

- 7.3.1. Concern in relation to the impact on public health has been raised in the grounds of appeal.
- 7.3.2. Section 2.6 (Health and Safety Aspects) of Circular Letter PL 07/12 reiterates the advice of the 1996 Guidelines that planning authorities should not include monitoring arrangements as a condition of planning permission nor determine planning applications on health grounds. 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.
- 7.3.3. Therefore, having regard to the content of the Circular Letter, issues of public health in relation to the telecommunications structure are not a matter for the planning authority.

7.4. EIA

- 7.4.1. The grounds of appeal consider the development should be subject to EIA.

- 7.4.2. Schedule 5 of the Planning & Development Regulations, 2001 (as amended), sets out development for the purposes of Part 10 i.e. Environmental Impact Assessment (EIA). Development of a class included in Part 1 requires mandatory EIA. Development of a class included in Part 2 is subject to thresholds and may require EIA. Any project which does not fall within a class of development under Schedule 5 does not require EIA. As telecommunications masts are not of a type of development set out in Schedule 5, no EIA is required.
- 7.4.3. The appellant states that EIA can still be required where, though not covered by the 'first schedule', the planning authority or the Board on appeal forms the view that the proposed development would be likely to have significant effects on the environment. This refers to sub-threshold EIA where, though not exceeding a particular threshold as set out in Part 1 or Part 2 of Schedule 5, EIA can still be required. However, the appellant appears to consider that this relates to *any* development, even that not of a type or class contained within Schedule 5 (or Annex I or II of the EIA Directive). Annex III of the EIA Directive is referenced in the grounds of appeal. Annex III relates to criteria to determine whether the projects listed in Annex II should be subject of an EIA. The development is not of a type set out in Annex II and, notwithstanding, I consider it is clear that the development is of a type that would have no significant effects on the environment.
- 7.4.4. The grounds of appeal consider that 'planning permission' is not development consent in the context of the EIA and SEA Directives. Article 1 (2)(c) of the EIA Directive states "development consent" means the decision of the competent authority or authorities which entitles the developer to proceed with the project". In the Irish context, I consider this to mean planning permission.
- 7.4.5. Therefore, as the proposed development does not fall within a class of development under Schedule 5 of the Planning & Development Regulations, 2001 (as amended), it does not require EIA.

8.0 **Appropriate Assessment Screening**

The requirements of Article 6(3) of the Habitats Directive, as related to screening the need for Appropriate Assessment of a project under Part XAB (section 177U) of the Planning and Development Act 2000 (as amended), are considered fully in this assessment.

8.1 **Background to the application**

- 8.1.1. The applicant did not include an AA Screening Report as part of the application documentation. The Council's Planning Report states that a screening exercise was carried out, which concluded that Appropriate Assessment was not required, but this is not attached to the file and does not appear to be available on the Council's website.
- 8.1.2. As a screening report for Appropriate Assessment was not submitted with this application, this screening assessment has been carried out de-novo.
- 8.1.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development would have any possible interaction that would be likely to have significant effects on a European Site(s).

8.2. **Brief description of the development**

- 8.2.1. Permission is sought for a 21.1 metres high multi-user monopole carrying telecommunications equipment together with associated exchange cabinets and associated site development works.
- 8.2.2. The development site occupies a grassed area along the south eastern boundary of sports grounds. The site is immediately adjacent to a car parking area and there are also industrial units in close proximity.
- 8.2.3. Taking account of the characteristics of the proposed development in terms of its location and scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European Sites:
 - Construction related pollution
 - Habitat loss/fragmentation
 - Habitat/species disturbance (construction and/or operational)

8.3. Submissions and observations

- 8.3.1. Michael Hoey made a submission to Kildare County Council and subsequently submitted the grounds of appeal. Among the main issues raised by Mr. Hoey is that the proximity of the Grand Canal requires full compliance with the Habitats Directive. Mr. Hoey also considers the application is invalid because a Natura Impact Statement was not submitted with the planning application. In this regard, I note that the Grand Canal is not a European Site and therefore it is not taken into consideration in the context of the Habitats Directive.

8.4. European Sites

- 8.4.1. The development site is not located in or immediately adjacent to a European site. The closest European site is River Barrow and River Nore SAC approx. 8.7km to the south west. I do not consider that there are any European sites within a possible zone of influence.

8.5. Identification of likely effects

- 8.5.1. Having regard to the relatively limited nature and scale of the proposed development, the separation distance between the site and the nearest Natura 2000 site, the absence of any habitat loss or fragmentation or any species disturbance and the absence of any watercourse or any other possible pathway between the site and any European site I consider that there are no likely effects as a result of the development. In addition, there is no possibility of any in combination effects with any other plan or project.

8.6. Mitigation measures

- 8.6.1. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

8.7. Screening Determination

- 8.7.1. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 (as amended). Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project, individually, or in combination with other plans or projects, would not be likely to give rise to significant effects on any European Sites and Appropriate Assessment including the submission of Natura Impact Statement is not, therefore, required.

8.7.2. This determination is based on the distance of the proposed development from European sites and the absence of any ecological connections.

9.0 Recommendation

I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

10.0 Reasons and Considerations

Having regard to the provisions of the Kildare County Development Plan 2017-2023 and the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in 1996 as updated by Circular Letter PL 07/12, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the relevant provisions of the Kildare County Development Plan 2017-2023 and 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.

11.0 Conditions

1. The development shall be carried out and completed 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. The proposed mast and all associated antennas, equipment and fencing shall be demolished and removed from site when it is no longer required. The site shall be reinstated to its predevelopment condition at the expense of the developer.

Reason: In the interest of orderly development.

3. The antennae type and mounting configuration shall be in accordance with the details submitted with this application, and notwithstanding the provisions of the Planning and Development Regulations 2001, and any statutory provision amending or replacing them, shall not be altered without a prior grant of planning permission.

Reason: To clarify the nature and extent of the permitted development to which this permission relates and to facilitate a full assessment of any future alterations.

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

Reason: In the interest of public health.

5. A low intensity fixed red obstacle light shall be fitted as close to the top of the mast as practicable and shall be visible from all angles in azimuth. Details of this light, its location and period of operation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public safety.

6. Details of the proposed colour scheme for the telecommunications structure and ancillary structures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

7. Landscaping of the site shall be carried out in accordance with a landscaping scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

8. No advertisement or advertisement structure shall be erected or displayed on the proposed structure or its appendages or within the curtilage of the site without a prior grant of planning permission.

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

Anthony Kelly

Planning Inspector

27.01.2021