



An
Bord
Pleanála

Inspector's Report ABP 308388-20.

Development	Continued use of the communication structure carrying antennae and dished with all associated ground mounted equipment.
Location	ESB Bagenalstown 38kv Substation, Kilcarrig, Bagenalstown, Co. Carlow.
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	20254
Applicant	ESB
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party vs. conditions
Appellant	ESB
Observers	None
Date of Site Inspection	7 th of December 2020
Inspector	Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Kilcarrig which lies circa 1.2km to the east of Bagenalstown, County Carlow. The site is situated off a county road the L70031 which commences at the junction with the R724 to the west. It extends for circa 1.5km and is served by a second junction with the R724 to the north-east. This road also provides access to Kilcarrig quarry which is situated 238m to the west of the appeal site. The site is located to south-east corner of the ESB 38kv substation compound at Kilcarrig. There is a farm house and farm buildings situated to the south of the site and there are houses located to the east of the site along the L70031.
- 1.2. The site has a stated site area of 0.1 hectare and is 90.1m A.S.L. Palisade fencing with an access gate encloses the compound which is occupied by two tripod lattice telecommunications communications structures. The ESB Telecoms structure located on the appeal site is 30m high. It contains antennae and dishes with associated ground mounted equipment. To the east of it is the existing 24m high Vodafone telecommunications structure with antennas, equipment cabin and associated equipment within a fenced compound.

2.0 Proposed Development

- 2.1. Permission is sought for the continued use of the communication structure carrying antennae and dished with all associated ground mounted equipment.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 9 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report of the Planning Officer stated that the existing site operating to include the provision of telecommunication services does not have an adverse

impact on the surrounding area. The permission seeks the renewal of a previously temporary permission can remain in situ while in operation on a permanent basis.

3.2.2. Other Technical Reports

Municipal District Office – No objection subject to conditions.

Environment – Grant of permission recommended.

Transportation – No objections.

Water Services – No objection.

3.3. Prescribed Bodies

Irish Water – no objection

Irish Aviation Authority – The Authority has no requirement for obstacle lighting on this telecommunications structure located at Kilcarrig Bagenalstown, Co. Carlow.

3.4. Third Party Observations

- 3.4.1. The Planning Authority did not receive any observations or submissions in relation to the application.

4.0 Planning History

PA Reg. Ref. 15/325 – Permission was granted for the retention of an existing 24m telecommunications support structure, antennas, equipment cabin and associated within a fenced compound (Ref. No. 06/1145).

PA Reg. Ref. 10/208 – Permission was granted for the extension of time on PRR 05/381, retaining the existing 30m high free-standing communications structure carrying antennae and communications dishes with associated ground mounted equipment cabinets within an existing 2.4m high palisade compound.

PA Reg. Ref. 08/87 – Permission was granted for the attachment of 3 no. 2.9m omni antennas with associated equipment and cabinet to existing 30m monopole for use by the emergency services for a new National Digital Radio Service.

PA Reg. Ref. 06/1145 – Permission was granted for the retention of an existing 24m telecommunications support structure, antennas, equipment cabin and associated equipment within a fenced compound.

PA Reg. Ref. 05/381 – Permission was granted for the erection of a 30m high free standing communications structure, carrying antennae and communications dishes, with associated ground-mounted equipment cabinets to share with other licensed operators within a 2.4m high palisade compound at ESB's existing Bagenalstown 38kV Substation.

5.0 Policy Context

5.1. Carlow County Development Plan 2015-2021

- 5.1.1. Section 6.11 refers to Communications - Carlow County Council acknowledges the importance of telecommunications, particularly broadband telecommunications, in terms of capitalising on investment opportunities and will encourage the further co-ordinated and focused development and extension of telecommunications infrastructure including broadband connectivity in the county, as a means of improving economic competitiveness.
- 5.1.2. Section 6.11.3 refers to Telecommunications. With regard to mobile phone network development, the physical infrastructure and structures needed to provide this service must be developed in a strategic way that minimises the impact on the environment and takes public opinion into account. Good siting and design need to become an integral part of the planning system, respecting not only environmentally sensitive areas, but also the wider context.
- 5.1.3. Antennae, their support structures, power lines, equipment containers and access roads will be assessed with respect to safety, siting and design criteria and the mitigation of intrusive impacts. In all circumstances, the sensitivity to the context of the proposed development requires consideration. Site conditions, safety aspects, technical constraints, landscape features and capacity requirements affect the design of such installations.

5.2. National Policy

- 5.2.1. Telecommunications Antennae and Support Structures Guidelines for Planning Authorities, July 1996.
- 5.2.2. The guidelines essentially support the development of telecommunication services in the country and provide guidance on site selection and minimising environmental impacts.
- 5.2.3. Circular Letter PL 07/12 on Telecommunications Antennae and Support Structures; The Circular Letter updated and revised elements of the 1996 Guidelines under Section 2.2 to 2.7. It advises Planning Authorities to:
- cease attaching time limiting conditions to telecommunications masts, except in exceptional circumstances,
 - avoid inclusion in development plans of minimum separation distances between masts and schools and houses,
 - omit conditions on planning permission requiring security in the form of a bond/cash deposit,
 - reiterates advice not to include monitoring arrangements on health and safety or to determine planning applications on health grounds,
 - future development contribution schemes to include waivers for broadband infrastructure provision.

5.3. Natural Heritage Designations

- 5.3.1. The following Natura 2000 sites are located in the vicinity of the proposed development site:
- The River Barrow and River Nore Special Area of Conservation (Site Code: 002162), is located approximately 1.6km to the west of the application site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the development to which its continued use is sought and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The

need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The first party the ESB has lodged an appeal against two conditions attached by the Planning Authority to the permission granted under PA Reg. Ref. 20/254. The issues raised are as follows.

- Under PA Reg. Ref. 20/254 permission was sought for the continuation of use of the existing 30m high telecommunications structure carrying antennae and dish with all associated ground mounted equipment within the existing compound. The existing development is a multi-operator structure and will continue to be shared by various communication network operators.
- Condition no. 2 states, 'This permission authorises the development as detailed in the plans and particulars received by the Planning Authority and does not relate to any other development on the site not subject to the planning permission whether or not such development would otherwise constitute exempted development. Reason: To avoid any misunderstanding as to the proper construction of this permission.'
- Condition no. 3 states, 'No additional antennae, dishes or other equipment other than those shown on the drawings received by the Planning Authority shall be erected on the site or attached to the monopole communication structure without the benefit of a separate planning permission. Reason: In the interest of the visual amenity and proper planning and sustainable development of the area.'
- The appellant is of the opinion that both the conditions are unnecessary and that they would unduly prohibit relatively minor amendments to the configuration and the amount of ground equipment or equipment install on the communications structure without the requirement to apply for further planning permission.

- The appellant contends that this would be unduly time consuming and costly. They note that the nature of the industry provides that technological changes occur regularly. This is acknowledged in the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities, DOELG (1996) and the Ministerial Circular PL07/12.
- The need for a degree of flexibility is also recognised in the exemptions listed in the Planning and Development Regulations 2001, (as amended) Schedule 2, Part 1, Exempted Development – General, where Class 31 specifically relates to the carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of – (a) to (k) subject to Conditions and Limitations. Such are the restrictions of types of development under Class 31 and the associated Conditions and Limitations that the applicant contends that an appropriate degree of control of any future changes in equipment within the site can be made without requiring the need to apply for planning permission and also while providing the Planning Authority with adequate assurance that the amenities of the area will not be unduly compromised.
- In relation to condition no. 2, it is submitted in the appeal that the condition is unnecessary and that it repeats condition no. 1. Condition no. 1 states, '*The development shall be carried out in accordance with the plans and particulars received by the planning authority on 27/07/20, except where altered or amended by condition in this permission.*' This includes the equipment on site, within the compound and on the communications structure.
- It is submitted that within the compound that changes to the equipment, under, on and over the ground including the cabins and cabinets are adequately covered under the Exemptions. It is stated that any changes within the compound could be made without harming the visual amenities of the area. The compound is well screened and is only visible from the site entrance. The remaining area of the site adjoining the larger ESB compound is screened by existing trees and hedgerow planting. The retention of the tree and hedgerow planting is protected by condition no. 8 of the subject permission PA. Reg. Ref. 20/254.

- Regarding condition no. 3 the appellant draws the Board’s attention to the Planning and Development Regulations 2001 (as amended). Class 31 to the telecommunication service, more specifically Class 31 (h) 2. (a), (b) which addresses the dimensions of additional antennae attached to an existing support structure. It is stated that:
“(a) the dimensions of any antennae provided shall not exceed the greatest length, width or depth of any antenna for mobile telephony of corresponding type already attached to the structure.
(b) In any other case, the dimensions of any such antennae provided shall not exceed –
(i) In the case of panel type antennae, 3 metres in length x 0.6 metres on width x 0.2 metres in depth,
(ii) In the case of any co-linear type antennae, 5 metres in length, 0.1 metres in diameter, and
(iii) In the case of any dish type antenna (weather shielded or not), 1.8 metres in diameter.
- Under Class 31 (h) 5 it is stated that ‘the height of the existing structure (including any antenna thereon) shall not be exceeded.
- The exemptions should provide all concerned including the Planning Authority adequate assurances that changes with the parameters of the conditions and limitations specified can be carried out without causing any harm to the amenities of the area. In the case of the subject site, the majority of the structure is well screened by trees. Any changes in the number, dimensions or configuration of equipment installed could if required be changed without materially increasing the bulk or appearance of the structure given the need to maintain adequate separation distances between antennae.
- A number of similar appeal cases are cited where the Board removed conditions that which restricted the carrying out of works under exempted development regulations. The examples cited are PL07.229181, PL07.229182, PL073.241861 and PL73.241902.

- The appellant concludes that the proposed development is in line with the aims and objectives of all national, regional, and local planning policy and ministerial guidance. The appellant requests that the Board remove Condition no. 2 and Condition no. 3 because they are not necessary to restrict any future changes that may be required to ground equipment or antennae.

6.2. Planning Authority Response

- None received.

7.0 Assessment

7.1. Nature of appeal

- 7.1.1. Having regard to the nature of the conditions appealed, I am satisfied that it is not necessary for An Bord Pleanála to determine the appeal as if the planning application has been made to it in the first instance, and the Board should proceed to utilise its powers under section 139 of the 2000 Act and give directions to the Planning Authority to attach, amend or remove the condition appealed.

7.2. Appealed conditions

- 7.2.1. Condition no. 2.

This permission authorises the development as detailed in the plans and particulars received by the Planning Authority and does not relate to any other development on site not subject to the planning application whether or not such development would otherwise constitute exempted development.

Reason: To avoid any misunderstanding as to the proper construction of this permission.

- 7.2.2. Condition no. 3

No additional antennae, dishes or other equipment other than those shown on the drawings received by the Planning Authority shall be erected on the site or attached to the monopole communication structure without the benefit of a separate planning permission.

Reason: In the interest of the visual amenity and proper planning and sustainable development of the area.

- 7.2.3. The appellant requests that these conditions be omitted on the basis that both the conditions are unnecessary and that they would unduly prohibit relatively minor amendments to the configuration and the amount of ground equipment or equipment install on the communications structure without the requirement to apply for further planning permission.
- 7.2.4. Condition No's 2 & 3 seek to ensure that no changes are made to the use of the existing communication structure and that no additional antennae dishes or other equipment are provided, without a separate grant of permission. These conditions are broadly similar to those attached to the parent permission (PA Reg. Ref. 05/381).
- 7.2.5. The proposal is to facilitate the continued use of a long established telecommunications support structure and associated equipment. It has been determined through the planning process that the site located within the rural area and within the ESB 38kv substation compound at Kilcarrig to be a suitable location for the development.
- 7.2.6. Both the conditions requires that development whether or not such development would constitute exempted development would require a subsequent application for permission. The first party set out in the appeal that changes to the equipment, under, on and over the ground including the cabins and cabinets within the compound are adequately covered under the Exemptions. It is stated in the appeal that any changes within the compound could be made without unduly impacting upon the visual amenities of the area. The first party state that the compound is well screened by existing mature trees to the east, it adjoins the larger ESB compound to the south and west and that it is only visible from the site entrance. It is also noted in the appeal that the retention of the tree and hedgerow planting is protected by condition no. 8 of the subject permission PA. Reg. Ref. 20/254. Accordingly, I consider that the site of the communication structure is well screened, and that condition no. 8 attached to the subject permission ensures the retention of the mature trees and hedgerow.
- 7.2.7. I would draw the Boards attention to Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, which deals with exempted

development. Class 31 provides for development in relation to telecommunications that are exempted development. Subsection (f) provides that cabinets forming part of a telecommunications system are exempted subject to compliance with the limitation that “the volume above ground level of any such cabinet shall not exceed 2 cubic metres measured externally”. Subsections (h) (i) and (j) provide limitations for dishes and antennae to be attached to existing and replacement support structures. These limitations generally provide that the total number of such antennae shall not exceed 12 of which not more than 8 shall be dish type.

7.2.8. Whilst I would accept that the attachment of additional equipment to the telecommunications structure has the potential to increase the overall visual impact of the support structure, the limitations and conditions attached to Class 31(h) of the Regulations controls the number and size of such installations. The first party have cited Class 31 (h) 2. (a), (b) which addresses the dimensions of additional antennae attached to an existing support structure. I note that these exemptions were introduced to facilitate sharing of telecommunications structures and to reduce the need for additional structures in a locality.

7.2.9. Furthermore, I note that paragraph 4.5 of ‘Telecommunications Antennae and Support Structures Guidelines for Planning Authorities’ encourages co-location and the sharing of installations and clustering of antennae as it will reduce the visual impact on the landscape and applicants have to satisfy the local authority that they have made a reasonable effort to share facilities. I consider that the provisions of the Guidelines and also the exempted development provisions of the Planning and Development Regulations 2001, (as amended) in relation to telecommunications infrastructure provide some flexibility for statutory undertakers to make changes in equipment which may be necessary and arise on foot of technological changes. The first party have stated that the removal of conditions no. 2 and no. 3 from the subject permission would facilitate such minor changes to equipment without the need to apply for further planning permission. I consider that the imposition of these conditions unduly restrict further development within the appeal site that would otherwise constitute exempted development.

7.2.10. Furthermore, I note that the appellant has cited a number of examples of decision of the Board, PL07.229181, PL07.229182, PL073.241861 and PL73.241902 which are similar appeal cases, where the Board removed conditions that which restricted the

carrying out of works under exempted development regulations. I also note the following appeals PL 06F.246597, PL15.246812, PL 01.245143 and ABP 302557 where the Board decided to omit similar conditions which sought to restrict the use of the mast and the addition of installations and antennae.

- 7.2.11. In conclusion, I consider that it is unreasonable to attach planning conditions which de-exempts, exempted development for no apparent reason, given the location of the structure and minimal impact to the surrounding area. Having regard to the clear conditions and limitations attached to the relevant exemption, the site's context and local and national policy guidance which seeks to promote co-location and maximise the use of existing structures, I therefore recommend that the Planning Authority be directed to remove Condition no. 2. And Condition no. 3

7.3. **Appropriate Assessment**

- 7.4. Having regard to the nature of the development to which its continued use is sought and the separation distance from Natura 2000 sites, I consider that the proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effects on a European site, in view of the sites' conservation objectives and that, therefore, a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not required.

8.0 **Recommendation**

- 8.1. Having inspected the site and reviewed the file documents I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted. Accordingly, I consider that it would be appropriate to use the provisions of Section 139 of the 2000 Act in this case. I recommend that Conditions 2 & 3 should be omitted for the following reasons and considerations.

9.0 **Reasons and Considerations**

Having regard to:

- a) the planning history relating to the site and the established use of the site for telecommunications infrastructure,

- b) the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities issued by the Department of the Environment and Local Government in July, 1996 and Circular Letter PL07/12 issued by the Department of the Environment, Community and Local Government in October, 2012,
- c) the provisions of the Carlow County Development Plan 2015-2021 which encourages co-sharing of masts,
- d) the provisions of the Planning and Development Regulations 2001, as amended in respect of exempted development for telecommunications infrastructure and the conditions and limitations contained therein,

It is not considered that Condition No. 2 & 3 are necessary or justified in this case.

Siobhan Carroll
Planning Inspector
11th of March 2021