



An
Bord
Pleanála

Inspector's Report ABP-308665-20

Question

Whether a cable landing station comprising 9 no. satellite antennae with a diameter of 2m or less inside a fenced area is development and is or is not exempted development

Location

Garrettstown, Kinsale, County Cork

Planning Authority

Cork County Council

Planning Authority Ref.

D/259/20

Referral

Referred by

Hibernia Atlantic Cable Systems
Limited

Date of Inspection

17th June, 2020

Inspector

Kevin Moore

1.0 Introduction

- 1.1 On 10th November 2020, Hibernia Atlantic Cable Systems Limited made a submission to the Board, under section 5 of the Planning and Development Act, seeking a review of Cork County Council's decision on the question whether planning permission is required for a cable land station comprising 9 no. satellite antennae with a diameter of 2m or less inside a fenced area of 16m X 16m, with fencing being 2.4m in height.

2.0 Site Location / Project Description

- 2.1 The location for the intended cable landing station is immediately to the rear of an existing agricultural complex at the western end of Garrettstown close to Courtmacsherry Bay in County Cork. The site is in grass and adjoins farm buildings to the east and south. A house is located to the front (south) of these structures. The site is behind (north of) the westernmost shed. There is a fenced compound containing equipment appearing to be associated with the applicant's operations immediately to the west of this shed. There is a small scheme of houses to the east of the farm complex and several detached houses along the road frontage to the south-west of the site.
- 2.2 The proposal comprises a fenced compound, 16m x 16m in area, accommodating 9 no. satellite receivers. The antennae would receive and transmit signals from satellites in space and would be connected to fibre optic cabling which is already in place. The purpose of the project is to give a fast internet connection to subscribers and the referrer submits that it would allow for better mobile, satellite TV, and data.

3.0 The Question

- 3.1 The question before the Board is:

Whether planning permission is required for a cable land station comprising 9 no. satellite antennae with a diameter of 2m or less inside a fenced area of 16m x 16m, with fencing being 2.4m in height.

4.0 The Referrer's Submission

4.1 The following is submitted from Hibernia Atlantic Cable Systems Limited:

- The development is exempt under Class 31(d) of the Planning and Development Regulations 2001 (as amended).
- The referrer is a Statutory Undertaker in line with section 2(1) of the Planning and Development Act, holding a general authorisation under the European Communities (Electronic Communications Networks and Services (Authorisation) Regulations 2011 (SI 335/2011). Under Regulation 4(4), the company is deemed to be authorised to provide an electronic communications network or electronic communications service or, as appropriate, both. A letter confirming statutory undertaker status is included.
- The proposal constitutes 'development', involving the carrying out of works on land.
- Section 4 of the Planning and Development Act sets out what shall be considered exempted development for the purposes of the Act and the Planning and Development Regulations describe the exemptions. The exemption is sought under Class 31(d) of Schedule 2 of the Regulations.
- With regard to the requirements of Article 6(1) of the Regulations, the proposal meets with the conditions and limitations set out in Column 2 opposite Class 31(d). No equipment shall exceed 10 metres in height, have a diameter exceeding 2 metres, or be situated within 10 metres of any house save with the consent in writing of the owner or occupier

thereof, or within 10 metres of the window of a workroom of any other structure.

- Regarding Article 9(1)(viii) of the Regulations, the proposal does not consist of the extension, alteration, repair or renewal of an unauthorised structure. The proposal is for a new compound.
- Reference is made to a number of precedents – ABP Refs. PL 04.RL.2979, ABP Ref. PL 09.RL.2687, and PL 45.RL.0925.

5.0 The Planning Authority's Considerations

5.1 The planning authority's declaration, dated 14th October 2020, concluded that a cable landing station comprising 9 no. satellite antennae with a diameter of 2m or less inside a fenced area at Garrettstown, Kinsale is development and is not exempted development, having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended
- Article 6(1) and Article 9(1)(viii) of the Planning and Development Regulations 2001, as amended
- Class 31 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as amended.

5.2 The declaration followed the recommendation set out in the Planner's report before it was made. The following is noted from the Planner's report:

- The applicant comes within the scope of a 'statutory undertaker' in section 2 of the Planning Act.
- A telecommunications container located to the south of the location for the proposal has been developed without planning permission.

- The proposal involves ‘development’ through the carrying out of works on, in, over and under land and the question may also arise whether a material change in the use of any land occurs.
- Section 4(1)(h) of the Planning Act is clear that a statutory undertaker can carry out certain developments as exempted development but this is only limited to the inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose.
- The referrer is relying on section 4(2) of the Planning Act with respect to planning exemption.
- The correct thing to do is to apply sub-section (viii) of Article 9 of the Regulations as the proposed development is effectively an extension to the cable landing station. The cable landing station is already in place.
- The following was also submitted:
 - The proposed groundworks are ‘development’ as defined in section 3 of the Planning Act, do not come within the scope of section 4(1)(g) nor any part of Article 6, Schedule 2, Part 1, Class 1 of Planning Regulations.
 - The erection of perimeter fencing with a gateway is ‘development’ as defined in section 3 of the Planning Act, does not come within the scope of section 4(1)(g) nor any part of Article 6, Schedule 2, Part 1, Class 1 of Planning Regulations.
 - Works to install the laying of cables from the cable landing station to a network/switch cabinet to each of the satellite antennae are ‘development’ as defined in section 3 of the Planning Act, come within the scope of Article 6, Schedule 2, Part 1, or Class 31a of the Regulations, but conflict with Article 9(viii) of the Regulations as they involve the extension through a connection to an unauthorised

structure (a landing station) or a structure the use of which is an unauthorised use.

- Works to install the network/switch cabinet constitute ‘development’ as defined in section 3 of the Planning Act, come within the scope of Article 6, Schedule 2, Part 1, or Class 31(bbb) of the Regulations, but conflict with Article 9(viii) of the Regulations as they involve the extension through a connection to an unauthorised structure (a landing station) or a structure the use of which is an unauthorised use.
- The placing of the 9 antennae attached to brackets fixed to land is ‘development’ as defined in section 3 of the Planning Act but does not come within the scope of Article 6, Schedule 2, Part 1, or Class 31d of the Regulations which only refers to equipment for transmitting or receiving signals from satellites in space, with no reference to antennae.

6.0 Statutory Provisions

6.1 Planning and Development Act 2000 (as amended)

PART I – Preliminary and General

Section 2(1)

In this Act, except where the context otherwise requires—

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to –

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or

- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking.

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3

3.—(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

PART 2 – Exempted Development

Section 4

4.—(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described) ...

6.2 Planning and Development Regulations, 2001 (as amended)

PART 2 - Exempted Development

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (a) if the carrying out of such development would – ...
 - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure the use of which is an unauthorised use, ...

Schedule 2

Part 1 Exempted Development – General

Column 1 Description of Development	Column 2 Conditions and Limitations
<i>Development by statutory undertakers</i> Class 31 (d) equipment for transmitting or receiving signals from satellites in space,	1. No such equipment shall exceed 10 metres in height 2. The diameter of any antenna shall not

	<p>exceed 2 metres.</p> <p>3. No such equipment shall be situated within 10 metres of the curtilage of any house save with the consent in writing of the owner or occupier thereof, or within 10 metres of the window of a workroom of any other structure.</p>
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7.0 Appropriate Assessment

7.1 It is reasonable to conclude that, on the basis of the information on the file relating to the nature and extent of the proposed installation, the proposed works and use of the installation, individually or in combination with other plans or projects, would not be likely to have a significant effect on any designated European Site. Appropriate Assessment would not be required for the works or use.

8.0 Assessment

8.1 Introduction

8.1.1 It is first noted that the question relates to equipment for transmitting or receiving signals from satellites in space. The 9 no. satellite receivers would be connected to underwater trans-Atlantic fibre optic cables which are already in place. Underground ducting serving the compound would be provided from the existing public road. This equipment is proposed to be located on part of a field sited behind agricultural sheds and behind an enclosed equipment compound. It is apparent from the cabling, ducting and provision of antennae and the purpose as described in the referrer's submission that the proposal involves development of equipment for transmitting or receiving signals from satellites in space. I note that the referrer, in correspondence to the Board and to the planning authority, has

termed the project a ‘cable landing station’. I am satisfied to determine that the proposal within the confines of the defined site would consist of equipment for transmitting or receiving signals from satellites in space and that, as part of the proposal, this equipment would be fenced, likely for security purposes. I further accept that this fencing forms an integral, albeit ancillary, part of the project.

8.2 The Question of Development

8.2.1 The provision of a fenced compound 16m x 16m in area and 9 no. satellite receivers at the site would require stripping back of land, backfilling, addition of clean stone, the erection of fencing and a gate, the laying of ducting from the public road to an underground junction box, further ducting into a networking / switch cabinet and onto the 9 no. satellite receivers, and the fixing of antennae to a base on the site. Such works would include acts of construction and excavation in accordance with the definition of ‘works’ as set out in section 2 of the Planning and Development Act. The carrying out of these works would occur on, in, and over land and would, therefore, constitute ‘development’ in accordance with the meaning of ‘development’ as set out in section 3 of the Planning and Development Act.

8.3 The Question of Exempted Development

8.3.1 *Statutory Undertaker*

The first issue that requires clarification is to determine whether Hibernia Atlantic Cable Systems is a ‘statutory undertaker’ for the purposes of the Planning Act. According to section 2(1) of the Planning and Development Act, “statutory undertaker” means:

a person, for the time being, authorised by or under any enactment or instrument under an enactment to –

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,*
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or*
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking.*

I note the letter with the referral to the Board which confirms the statutory undertaker status of Hibernia Atlantic Cable Systems. It is noted that the company holds a general authorisation under the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (SI 335/2011). The company is, thus, deemed to be authorised to provide an electronic communications network or electronic communications service or, as appropriate, both in accordance with Regulation 4(4).

Having regard to the above, it is reasonable to determine that the referrer in this instance is a 'statutory undertaker' authorised to provide or carry out works for the provision of telecommunications services in accordance with section 2(1) of the Planning and Development Act. I note the planning authority accepts that the referrer is a 'statutory undertaker' for the purposes of the Planning Act.

8.3.2 *Section 4*

I note that the planning authority references section 4 of the Planning and Development Act in its declaration and that the Planner refers to section 4(1)(h), while quoting the content of sub-section 4(1)(g). The Board will note that both sub-sections 4(1)(g) and 4(1)(h) are not relevant to the question at hand. The referrer is reliant on the provisions of section 4(2) and the classes of exempted development provided for under the Planning and Development Regulations.

8.3.3 *Planning and Development Regulations 2001, as amended*

I note the provisions of Article 6(1) of the Regulations and that the planning authority is reliant on Article 9(1)(viii) in its declaration, determining that the development cannot be exempted development because the carrying out of such development would consist of or comprise the extension of an unauthorised structure the use of which is an unauthorised use.

The proposed development would consist of the installation of equipment for transmitting or receiving signals from satellites in space. This equipment would be sited on a separate site from the adjoining established compound. While some inter-connectivity may result with other infrastructure in the vicinity, this does not detract from the conclusion that the equipment the subject of the question now before the Board is for transmitting or receiving signals from satellites in space and that the proposed installation is not an extension of any structure. I note that the planning authority has not provided any details determining why the existing compound is unauthorised and how the proposed installation would constitute an extension to it.

Finally, I note the provisions of Class 31(d) of Part 1 of Schedule 2 of the Planning and Development Regulations and its associated conditions and limitations. This is the applicable class of exempted development relating to the proposed development. I repeat again that what is proposed is equipment for transmitting or receiving signals from space, with the referrer referencing a principal component of the installation as being 'satellite receivers'. The antennae are an integral part of this communication system. I furthermore accept that in order to install this equipment that the proposed groundworks, erection of fencing, the provision of electrical and support other services, and the fixing of the antennae to the site are integral parts of the installation, necessary for the availing of the exempted development provision.

I note that:

- None of the equipment would exceed 10 metres in height;
- The diameter of the antenna would not exceed 2 metres; and
- None of the equipment would be situated within 10 metres of the curtilage of any house save with the consent in writing of the owner or occupier thereof or within 10 metres of the window of a workroom of any other structure. The equipment would not be within 10 metres of any house.

9.0 CONCLUSION AND RECOMMENDATION

WHEREAS a question has arisen as to whether a cable landing station comprising 9 no. satellite antennae with a diameter of 2m or less inside a fenced area is development and is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Hibernia Atlantic Cable Systems Limited on the 10th day of November, 2020:

AND WHEREAS An Bord Pleanála, in considering this referral, had particular regard to:

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),
- (b) articles 5-11 of the Planning and Development Regulations 2001 (as amended), with particular reference to articles 6(1) and 9(1)(a)(viii), and
- (c) Part 1 of Schedule 2 *Exempted Development – General* of the Regulations, with particular reference to Class 31(d),

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the installation of a fenced compound 16m x 16m in area and the provision of 9 no. satellite receivers constitutes 'development' for the purposes of the Planning and Development Act, and
- (b) the installation of a fenced compound 16m x 16m in area and the provision of 9 no. satellite receivers to receive and transmit signals from satellites in space comes within the scope of Class 31(d) of Part 1 of Schedule of the Regulations and does not consist of or comprise the extension of an unauthorised structure the use of which is an unauthorised use:

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that the provision by Hibernia Atlantic Cabling Systems Limited of a cable landing station consisting of a fenced compound 16m x 16m in area and the provision of 9 no. satellite receivers constitutes development and development that is exempted development.

Kevin Moore
Senior Planning Inspector
24th March, 2020