



An  
Bord  
Pleanála

## Inspector's Report ABP-310060-21

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<b>Development</b>	To remove the headframe on the existing 12m high telecommunications lattice structure (overall height 14.4m) and extend the structure to an overall height of 20m together with the addition of telecommunication antenna, dishes and associated equipment.
<b>Location</b>	Eir Exchange, Tullyvarraga, Shannon Town Centre, Co. Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	20/635
<b>Applicant(s)</b>	Eircom Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Eircom Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	19/06/2021.
<b>Inspector</b>	Auriol Considine

## **1.0 Site Location and Description**

- 1.1. The proposed development site is located within the centre of Shannon Town and within the existing Eir Exchange site at Tullyvarraga. The site is currently home to an existing lattice structure which has been in place on the site for many years. The site also includes the various buildings, cabinets and associated equipment for the telecommunication infrastructure.
- 1.2. There are a variety of uses noted within the vicinity of the site including residential the Department of Transport offices and the Credit Union to the east, Enterprise Ireland offices to the north east, the Public Library to the west and a block of apartments immediately to the west, between the site and the library. There are further apartment buildings located to the south of the site, with the Garda Station and town park adjacent.
- 1.3. The site has a stated area of 0.017ha.

## **2.0 Proposed Development**

- 2.1. Permission is sought to remove the headframe on the existing 12m high telecommunications lattice structure (overall height 14.4m) and extend the structure to an overall height of 20m together with the addition of telecommunication antenna, dishes and associated equipment, all at the existing Eir Exchange compound at Tullyvarraga, Shannon Town Centre, Co. Clare.
- 2.2. The application includes the relevant plans and particulars, as well as a cover letter setting out the justification for the structure.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to refuse permission for the proposed development having regard to the height and design of the structure and the location in close proximity to a number of residential properties. The decision concluded that the development would seriously injure the residential and visual amenities of the area,

would depreciate the value of property and would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Initial Planning Report:

- The initial planning Report considered the principle of the development to comply with the zoning objective afforded to the site and accepted the technical justification for the mast at this site.
- The initial report also considered that the development was acceptable with regard to traffic, visual and residential amenities. Issues relating to public health and flood risk were noted.
- The Planning Officer set out the details of the necessity to pay a development contribution.
- The need for EIA was excluded at preliminary examination and a screening determination is noted as not being required.
- The report included screening for Appropriate Assessment which concluded that there is no potential for significant effects arising from the proposed development.
- The initial report did require the submission of further information in relation to air traffic safety. A further information request issued on this matter.

3.2.2. Following the submission of the response to FI, the final planning officers report concluded that the proposed development was acceptable. A recommendation to grant, subject to 6 standard conditions is noted.

3.2.3. The SEP included a report on this file, noting the area planners report. The SEP however, raised concerns with regard to the proposed development in terms of the impact of the development on the amenities of the area. This report recommended that permission be refused for the development, and I note that the A/Senior Planner accepted this recommendation to refuse.

#### 3.2.4. Other Technical Reports

**Chief Fire Officer:** Noted no objection to the proposed development.

### 3.3. Prescribed Bodies

**HSA:** The HSA does not advise against the granting of permission.

**GSI:** No specific comments or observations to make.

**Mid West National Road Design Office:** No observations to make.

**Shannon Airport Authority:** Notes that the proposed development may have implications for the flight paths of aircraft. Notes that regard must be had to the IA Obstacles to Aircraft in Flight Order, 2005 (SI No. 215 of 2005) as amended which specifies the certain criteria used to determine whether or not any object anywhere in the State is deemed to be an obstacle affecting aircraft operations.

The technical assessment of SAA indicates that the proposed increase in height of the structure to an overall height of 20m together with the addition of antennae, dishes and associated equipment will not penetrate either the Inner Horizontal Surface or the Transitional Surface of the aerodrome OLS.

The report also notes the requirements of the IAA and that obstacle lighting should be in conspicuous positions on the extended structure to retain the general definition of the telecommunications tower.

30 days notice should be given to the airport of the intention to commence crane operations at the tower site.

**IAA:** The applicant should be directed to engage directly with Shannon Airport to assess the impact of the proposed development.

### 3.4. Third Party Observations

One third party objection to the proposed development is noted on the PA file from Ms. Siobhan Ni Chonsidin. The objection includes a number of signatories and issues raised are summarised as follows:

- Notes the details of recent updates to the Telecommunications Guidelines which introduced a number of deregulations in favour of telecommunications operators which has created a free for all climate for the industry and has left little leeway for public objections.

- The site is located in the town centre and adjacent to places where people live and children play.
- The technology is untested.
- Issues raised with the address given as no Eircode exists for the site.
- Visual implications adjacent to residential housing, flats, schools and businesses.
- The development is contrary to the Guidelines as only as a last resort should a free standing mast be located within or in the immediate surrounds of smaller towns and villages.
- The residents of Shannon Town have not been consulted on this or other masts in the town.
- There are a number of other masts in the vicinity.
- Objection cites the findings of the 2007 report from Bio Initiative Working Group and the 2011 WHO, IARC Team classification of all EMF/Radio Frequency/Wi-fi used to power modern technology as Class 2b Carcinogen.
- Circular Letter PL 07/12 is in breach of the Constitution of Ireland in a number of ways, raising serious issues of accountability for ABP and local planning authorities regarding the decision making process.

#### **4.0 Planning History**

There is no relevant planning history pertaining to this site.

It is noted that the existing mast on the site was erected on the site under the exempted development provisions of the 19 Regulations, in accordance with Class 29 of SI no. 86/1994 – Local Government (Planning and Development) Regulations 1994. The height of the structure did not exceed 15m.

## 5.0 Policy Context

### 5.1. National Policy & Guidelines

#### 5.1.1. National Development Plan 2018 – 2027 (NDP)

The NDP states that

“A fundamental underlying objective of the NDP is, therefore, to focus on continued investment to yield a public infrastructure that facilitates priorities such as high-speed broadband and public transport in better cities and better communities.”

#### 5.1.2. Telecommunications Antenna and Support Structures – Guidelines for Planning Authorities 1996 & Circular Letter PL07/12:

This document provides guidance for the assessment of telecommunication structures and were substantially updated by the DoEHLG Circular Letter PL07/12. Of note, the 2012 Circular provided that:

- Health grounds should no longer be considered
- Development contributions for broadband infrastructure should be waived.
- The request for bonds should be replaced with an appropriate condition requiring the removal of the mast
- Conditions restricting the life of the permission should not be included
- Separation distances between masts and houses or schools should not be included in development plans.

### 5.2. Development Plan

#### 5.2.1. The Clare County Development Plan 2017-2023 is the relevant policy document pertaining to this appeal.

#### 5.2.2. Section 8.8.9 of the plan deals with Broadband Connectivity. The Plan notes that the provision of high speed, reliable and affordable broadband is essential to the economic growth of both the county and wider region in terms of attracting inward

investment. Policy CDP8.43 states that it is the development plan objective with regard to broadband connectivity:

- A To work with the Department of Communications, Climate Change and Natural Resources to ensure the prompt implementation of the Rural Broadband Scheme in County Clare;
- B To facilitate the delivery of high-capacity ICT infrastructure throughout the County.

5.2.3. Section 8.8.10 of the Plan deals with Telecommunications Infrastructure and CDP8.44 Telecommunications Infrastructure, is relevant stating that it is an objective of the Development Plan:

To facilitate the provision of telecommunications services at appropriate locations within the County having regard to the DoEHLG 'Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities 1996 (as updated by PL07/12 of 2012)'.

### **5.3. Shannon Town & Environs Local Area Plan 2012-2018 as amended**

5.3.1. The subject site is located within the town centre and on lands zoned Mixed Use which:

Includes land for a range of uses, i.e where appropriate for primary and secondary uses e.g. commercial/retail dev. as the primary use with residential dev. as a secondary use

### **5.4. Development Contribution Scheme 2017-2023**

5.4.1. The Development Contribution Scheme was adopted on the 24<sup>th</sup> of April 2017. The Scheme identifies classes of development for which Development Contributions are payable and the section on Other Non-Residential Development includes Telecommunication Masts which relates to all free-standing telecommunications support structures, including those in place for telephone, radio, TV. The rate of payment is €17,000 per mast. The scheme notes:

The contribution is a once off payment due in respect of each "mast".

Subsequent applications to extend the life of temporary permissions shall not

be liable for this contribution unless the existing structure is to be materially altered. The co-location of additional antennae on an existing mast will not be considered to be a material alteration of the structure for the purposes of this scheme.

Any new buildings associated with the masts and antennae will be charged at the relevant non-residential built development rate.

5.4.2. The Scheme also provides for exemptions, part (D) where Table 2: Exemptions includes as follows:

(8) New Telecommunication Masts & Antennae that provide for Broadband.

## 5.5. Natural Heritage Designations

The subject site is not located within any designated site. The closest Natura 2000 site lies approximately 1km to the south being the Lower River Shannon SAC, Site Code 002165 and the River Shannon and River Fergus Estuaries SPA, Site Code 004077.

The Fergus Estuary and Inner Shannon North Shore pNHA, Site Code 004048, is also located 1km to the south.

## 5.6. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development, 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. This is a First Party appeal, submitted by Towercom on behalf of Eircom Ltd., against the decision of the PA to refuse planning permission for the development. The appeal is summarised as follows:

- Permission should be granted having regard to the regional spatial and economic strategy for the area, Guidelines under Section 28, policy directives under Section 29, the statutory obligations of any local authority in the area



and any relevant policy of the Government, Minister or any Minister of the Government.

- The applicant disagrees with the assessment of the PA that the development would seriously injure the visual amenity of the area, would depreciate the value of properties in the vicinity and would be contrary to the proper planning and sustainable development of the area.
- In terms of justification for the development, it is submitted that Eir's 4G coverage in Shannon is poor and requires improvement.
- There is a lack of purpose-built telecommunications structures in Shannon and TE companies have had to resort to attaching antenna to low buildings with limited scope to extend coverage footprint. This has resulted in higher numbers of poor performing sites.
- The extended structure will release Eir to significantly improve its next generation services for the benefit of Shannon within its own TE exchange compound.
- The existing mast on the site was erected under the exempted development regulations applicable.
- The COMREG mobile coverage map demonstrates the poor 4G coverage in Shannon's key economic areas.
- Accessibility to high speed coverage is critical for residents and businesses.
- The applicant considered alternative locations as detailed in Section 6 of the Appeal document, all of which were discounted.
- The applicant has adhered to the requirements of the County Development Plan and Guidelines and the development complies with national policy.
- The increase in height is just 5.6m in terms of visual impact.
- The submission notes that there has always been a mast at this location, notwithstanding the proximity of the apartment building.

It is requested that permission for the development be granted.

## 6.2. Planning Authority Response

The Planning Authority has responded to this appeal requesting that the Board uphold its decision to refuse permission.

## 6.3. Observations

There are no observations noted.

## 7.0 Assessment

7.1. Having regard to the nature of the proposed development, together with the information presented in support of the proposed development, I consider it appropriate to assess the proposal under the following headings:

- Principle of the proposed development & compliance with the Development Plan
- Development Contribution
- Other Issues
- Appropriate Assessment

### 7.2. Principle of the proposed development & compliance with the Development Plan.

7.2.1. The proposed development seeks to remove the headframe on the existing 12m high telecommunications lattice structure (overall height 14.4m) and extend the structure to an overall height of 20m together with the addition of telecommunication antenna, dishes and associated equipment, all at the existing Eir Exchange compound, at Tullyvarraga, Shannon Town Centre, Co. Clare. The existing site is occupied by a lattice mast which rises to 12m with the headframe resulting in the overall height rising to 14.4m as well as the various buildings, cabinets and associated equipment for the telecommunication infrastructure. The mast has been in place for a number of years.

7.2.2. The site is located on lands zoned for Mixed Use in the Shannon Town & Environs LAP 2012-2018 as amended. The Clare County Development Plan 2017-2023 is the

relevant policy document pertaining to this appeal. Section 8.8.9 of the plan deals with Broadband Connectivity and the Plan notes that the provision of high speed, reliable and affordable broadband is essential to the economic growth of both the county and wider region in terms of attracting inward investment. Section 8.8.10 of the Plan deals with Telecommunications Infrastructure and the following policies are considered relevant in this case:

- Policy CDP8.43 states that it is the development plan objective with regard to broadband connectivity:
  - A To work with the Department of Communications, Climate Change and Natural Resources to ensure the prompt implementation of the Rural Broadband Scheme in County Clare;
  - B To facilitate the delivery of high-capacity ICT infrastructure throughout the County.
- CDP8.44 Telecommunications Infrastructure is relevant stating that it is an objective of the Development Plan:

To facilitate the provision of telecommunications services at appropriate locations within the County having regard to the DoEHLG 'Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities 1996 (as updated by PL07/12 of 2012)'.

In this regard, I consider that the proposed development accords with the stated policy requirements of the County Development Plan. I am further satisfied that the principle of the development is acceptable in terms of the zoning objective afforded to the site.

7.2.3. In terms of the reason for refusal cited by the PA, the Board will note that the primary concerns relate to non-compliance with Objective CDP8.44 of the Plan due to the impact on visual and residential amenity as well as depreciating the value of property in the vicinity. In this regard, I would note that no issues to this effect were raised at further information stage, and the SEP countersigned the initial Planning Officers report.

7.2.4. I would note that the Telecommunication Guidelines, at Section 4 deal with development control matters and section 4.2 deals with design and siting and section

4.3 dealing with visual impact. While I acknowledge the preference for monopoles, the Guidelines note that the design of the support structure will be dictated by radio and engineering parameters, with limited scope for requesting changes in design. Given the design of the existing mast at the site, together with the first party submission, I am satisfied that the proposed development is acceptable at this location.

7.2.5. With regard to the visual impacts associated with the proposed development, I would acknowledge the location of the site within the urban area of Shannon town. This area of Shannon includes a variety of uses, including residential, commercial, office, library and other public amenities such as the town park. I also noted on the date of my site inspection, the presence of a number of small cells on existing buildings in the vicinity of the site, as well as the presence of other monopole structures. In terms of the principle of co-location, the Board will note that the applicant submitted an assessment of the relevant existing masts and provided reasoning for discounting them for the purposes of their needs. The reasons for discounting the existing structures are identified as being primarily due to the fact that they will not fulfil coverage requirements by reason of them being at capacity or their location is remote, offering limited improvements to coverage in the areas needed. I am satisfied that the development has been justified in this instance.

7.2.6. The proposed development will result in the existing mast height being raised to an overall height of 20m, which will include the headframe. As such, the overall increase in height is 5.6m. Overall, and having regard to all of the information available, I am satisfied that the visual impacts associated with the proposed development are acceptable and that the development as proposed, seeks to progress national policy to secure the implementation of the National Broadband Plan and seek to ensure that fast and effective broadband facilities are available in all parts of the county. In this regard, I consider that the proposed development is acceptable.

### **7.3. Development Contribution**

7.3.1. The Board will note the Planning Officers report in terms of the Development Contribution Scheme. The proposed development seeks to extend the height of an existing telecommunications mast, which was erected under the exempted

development provisions of the 1994 Planning & Development Regulations. As such, no development contribution was paid for the mast at the time of its erection.

- 7.3.2. The current Clare County Council Development Contribution Scheme was adopted on the 24<sup>th</sup> of April 2017. The Scheme identifies classes of development for which Development Contributions are payable and the section on Other Non-Residential Development includes Telecommunication Masts which relates to all free-standing telecommunications support structures, including those in place for telephone, radio, TV. The rate of payment is €17,000 per mast. The scheme notes:

The contribution is a once off payment due in respect of each “mast”.

Subsequent applications to extend the life of temporary permissions shall not be liable for this contribution unless the existing structure is to be materially altered. The co-location of additional antennae on an existing mast will not be considered to be a material alteration of the structure for the purposes of this scheme.

Any new buildings associated with the masts and antennae will be charged at the relevant non-residential built development rate.

- 7.3.3. The Scheme also provides for exemptions, part (D) where Table 2: Exemptions includes as follows:

(8) New Telecommunication Masts & Antennae that provide for Broadband.

- 7.3.4. In terms of the above text, it would appear that the proposed development should be subject to a development contribution. However, part (D) and Table 2 provides for exemptions where new masts and antennae provide broadband. In this instance, it would appear that the mast will provide for a range of services, including broadband and phone services. I note that the Development Contribution Scheme, while requiring the payment of a contribution for a new mast, does not provide for a reduction in contributions *pro-rata* for broadband infrastructure.

- 7.3.5. In terms of the proposed development, I am satisfied that the proposed increase in height will improve the existing level of Eir service in Shannon Town Centre, which is currently indicated as being ‘good’ to ‘very good’ in accordance with the COMREG coverage map for the area. In this regard, and in accordance with DoEHLG Circular Letter PL07/12, I am satisfied that the payment of a development contribution for the

development, under the provision of the Clare County Councils Development Contribution Scheme should not be applied.

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

- 7.4.1. In terms of other issues, the Board will note that third-parties to the PAs assessment of the development, raised concerns in terms of provision of the mast given that there are existing masts in Shannon in the vicinity of the site. I have noted the technical justification commentary submitted with the application and note that there is an area within Shannon Town Centre which falls below the very good coverage classification. I also acknowledge that the existing masts cited in the third-party submission to the PA have been considered by the applicant. I also note that the existing masts in the area have been considered unsuitable to provide the necessary coverage required.
- 7.4.2. The National Broadband Plan, 2012 Department of Communication, Energy and Natural Resources (DCENR), seeks to change the broadband landscape in Ireland through a combination of commercial and State led investment, and the purpose of the Report of the Mobile Phone and Broadband Taskforce is to deliver the Plan in the shortest time possible time. In terms of the proposed development, I am satisfied that the applicant has presented a reasonable justification for the proposed infrastructure.
- 7.4.3. While I note the third-party comments with regard to the provisions of Circular Letters PL07/12 and PL01/2018, these are not matters for the Board.

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

The subject site is not located within any designated site. The closest Natura 2000 site lies approximately 1km to the south being the Lower River Shannon SAC, Site Code 002165 and the River Shannon and River Fergus Estuaries SPA, Site Code 004077.

Having regard to the nature and scale of the proposed development, I am satisfied that no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

8.1. It is recommended that the proposed development be granted for the following stated reasons and considerations and subject to the stated conditions.

## 9.0 Reasons and Considerations

Having regard to the following matters:

- (a) the provisions of the Clare County Development Plan 2017 – 2023,
- (b) the zoning objective afforded to the site as set out in the Shannon Town & Environs Local Area Plan 2012-2018, as amended,
- (c) the guidelines relating to Telecommunications Antennae and Support Structures which were issued by the Department of the Environment and Local Government to planning authorities in July, 1996,
- (d) Circular Letter PL/07/12, issued by the Department of the Environment, Community and Local Government in October, 2012,
- (e) Circular Letter PL/01/2018, issued by the Department of the Environment, Community and Local Government in February, 2018,
- (f) the planning history of the site,
- (g) the nature and scale of the proposed development,
- (h) the submissions and observations received, and
- (i) the planning officers report and decision of the planning authority,

The Board considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of the visual amenity of the area and would not seriously injure the residential amenities of adjoining properties. The proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and further information

submitted on the 18<sup>th</sup> February 2021, 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 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.

3. Details of the proposed colour scheme for the telecommunications structure, ancillary structures and fencing 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.

4. 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.

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A. Considine

Planning Inspector

20<sup>th</sup> June, 2021