



An
Bord
Pleanála

Inspector's Report ABP-310061-21

Development	To erect a 20m high telecommunications support structure carrying antennas and dishes together with associated ground based equipment, all enclosed in security fencing and to remove existing 13.5m high telecommunications support structure.
Location	Ballynacragga, Newmarket on Fergus, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	20/472
Applicant(s)	Vodafone Ireland Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Vodafone Ireland Ltd.
Observer(s)	None.
Date of Site Inspection	19/06/2021.
Inspector	Auriol Considine

1.0 Site Location and Description

- 1.1. The proposed development site is located within the northern area of the village of Newmarket-on-Fergus, in Co. Clare. The site comprises the existing telecommunications compound at Ballynacragga, to the west of the town. There is an existing 12m high lattice support structure which has been in place on the site since 1995, constructed as part of the Eircell infrastructure. With the existing headframe, the overall height of the existing mast rises to 1.5m. The site also includes the various buildings, cabinets and associated equipment for the telecommunication infrastructure.
- 1.2. The site lies within a generally low-density residential area, set back from the public road and to the rear of existing single storey houses. Access to the site is via an existing laneway which is lightly gravelled and grassed. This laneway provides access to a house to the north, Beechlawn, and there has been a bollard erected at the entrance to prevent vehicular traffic using the laneway.
- 1.3. The site has a stated area of 0.0144ha and is well screened by mature hedges and trees.

2.0 Proposed Development

- 2.1. Permission is sought to erect a 20m high telecommunications support structure carrying antennas and dishes together with associated ground-based equipment, all enclosed in security fencing and to remove existing 13.5m high telecommunications support structure, all at Ballynacragga, Newmarket on Fergus, 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 and a letter of consent from the stated landowner, Eir.
- 2.3. Following the submission of the response to the further information request, the applicant clarified that the existing mast has been in place since 1995. The local authority granted special permission by way of letter dated 2nd July 1963 issued to the Department of Posts and Telegraphs, under the Town and Regional Planning Acts for the erection of a telephone exchange at Ballynacragga. The Council further

gave a right of passage over the laneway leading to the property. The applicant submits that no further third-party consent is required to access the mast.

- 2.4. In terms of access, it is noted that utility maintenance vehicles all over Ireland park to inspect and maintain equipment and infrastructure. This is limited to approximately 10 visits a year using a single vehicle and this will continue whether the structure is increased in height or not.
- 2.5. It is noted that the mast was erected in accordance with Class 29 of the Statutory Instrument No. 86/1994 – Local Government (Planning & Development) Regulations 1994.

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 CDP requirements given the existing use of the site.
- Concern regarding the permission to use the private access is raised.
- The Planning Officer accepted the technical justification for the mast at this site and noted the other sites examined by the applicant.
- The initial report also raised concerns in terms of the roads and traffic issues arising at the site, given that parking occurs on both sides of the public road and the proximity of two junctions serving the Glencragga Estate to the site entrance and the volume of traffic arising.

- Issues relating to public health and flood risk were noted.
- 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 consents to make the application, roads and traffic matters and the planning history of the site. A further information request issued on these matters.

I note that the SEP raised concerns in terms of visual and residential amenity but considered that the matters raised by the Planning Officer should be clarified.

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 4 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.

3.3. **Other Technical Reports**

None.

3.4. **Prescribed Bodies**

IAA: No observations.

3.5. **Third Party Observations**

3.5.1. Three third party objections to the proposed development are noted on the PA file, including one with multiple signatories. The issues raised are summarised as follows:

- The existing mast was erected quickly and without planning permission.

- Access to the site is via third party lands for which there is no agreement to use. The third party has had to go to extreme lengths to prevent employees of Eir and KN Networks from parking their vehicles on private property.
- There has been ongoing trespassing.
- The site is not suitable for the proposed development due to the proximity of houses and health implications are undesirable.
- The existing mast is an eyesore. The proposed mast will be 50% higher and will tower over all neighbouring houses.
- Telecom vans park on the street in a dangerous manner.
- The specifics of the application are not clear, so it is presumed to be 5G.
- Report from ElectroSensitivity UK included in one submission.
- Health risks associated with masts raised and minimum distance of 500m should be maintained.
- The location of the mast in the urban area covers many delicate communities, including the local school.

3.5.2. Following the submission of the response for further information, two further third-party submissions were received by the Planning Authority. The issues raised are summarised as follows:

- Visual impacts associated with the higher mast.
- Health concerns associated with masts.
- Impact on the natural scenery and landscape.
- Roads and traffic issues including parking.
- Devaluation of property.

4.0 Planning History

4.1.1. There is no relevant planning history pertaining to this site.

4.1.2. It is noted that the existing mast on the site was erected on the site, over 20 years ago, under the exempted development provisions, and 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, at 12m (13.5 including headframe).

- 4.1.3. The planning history of the surrounding area relates primarily to residential developments.

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)'.

5.2.4. The site is located within the village of Newmarket on Fergus and within the Shannon Municipal District. The site is zoned R2 Existing Residential where it is the stated objective is:

to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home-based employment uses where the primary residential use will be maintained.

5.3. **Development Contribution Scheme 2017-2023**

5.3.1. The Development Contribution Scheme was adopted on the 24th 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.

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

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

5.4. **Natural Heritage Designations**

The subject site is not located within any designated site. The closest Natura 2000 site lies approximately 400m to the south being the Lough Gash Turlough SAC, Site Code 000051. The Lower River Shannon SAC, Site Code 002165 and the River Shannon and River Fergus Estuaries SPA, Site Code 004077 are located approximately 2.7km to the west of the site.

The Fergus Estuary and Inner Shannon North Shore pNHA, Site Code 004048, is also located approximately 2.7km to the west of the site.

5.5. **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 Vodafone Ireland 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 Vodafones 4G coverage in Newmarket-on-Fergus is weak and is concentrated around the M18 motorway to the west and the existing mast is too low to effectively transmit to the east of the town.
- The extended structure will resolve the existing issues in the area.
- The COMREG mobile coverage map demonstrates the poor 4G coverage in Newmarket-on-Fergus.
- Accessibility to high-speed coverage is critical for residents and businesses.
- The applicant considered alternative locations as detailed in Section 5 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 appellant submits that a reduction in 2m may be acceptable from 20m to 18m, which is low by industry standards and is a minimum structure height permissible consistent with effective operation.
- The submission notes that there has always been a mast at this location, notwithstanding the proximity of the apartment building.
- The existing mast on the site was erected under the exempted development regulations applicable.

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 existing 12m high telecommunications lattice structure (overall height 13.5m) and erect a 20m high telecommunications support structure carrying antennas and dishes together with associated ground-based equipment, all enclosed in security fencing, all at Ballynacragga, Newmarket on Fergus, 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 13.5m as well as the various buildings, cabinets and associated equipment for the telecommunication infrastructure. The mast has been in place since 1995.
- 7.2.2. The site is located on lands zoned for R2 Existing Residential where it is the stated objective is:
- to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home-based employment uses where the primary residential use will be maintained.
- 7.2.3. 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 longstanding presence of a mast at this site.

7.2.4. 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, although the SEP indicated some concerns at this stage.

7.2.5. 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.

7.2.6. With regard to the visual impacts associated with the proposed development, I would acknowledge the location of the site within the urban area of Newmarket-on-Fergus. This area of Newmarket, to the north of the village centre, is primarily residential in nature, with a mix of low-density housing as well as medium density. I also note public amenities such as the park / green space which is located to the south of the site. The subject site is bound by mature hedges and trees and in this regard, the existing structures on the site are well screened. The increase in height of the

structure will result in the mast being more visible across a wider area. In the appeal document, the Board will note that the appellant has indicated that a structure height of 18m as opposed to the 20m sought would be acceptable. As such, the 2m reduction in height will certainly reduce any potential visual impacts arising.

- 7.2.7. 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, and dis-improvement in one instance, to coverage in the areas needed. I am satisfied that the development has been justified in this instance.
- 7.2.8. The proposed development will result in the installation of a mast with an overall height of 21.5m, which will include the headframe. Should the Board be minded to reduce the structure height by the 2m suggested by the applicant/appellant, this will reduce the overall height accordingly. As such, the overall increase in height in terms of the existing mast to be replaced, would be 6m.
- 7.2.9. Overall, and having regard to all of the information available, together with the context of the site and the existing screening in the vicinity, 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 essentially replace 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 existing mast at the time of its erection.

7.3.2. The current Clare County Council Development Contribution Scheme was adopted on the 24th 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 Vodafone service in Newmarket-on-Fergus, which is currently indicated as being ‘fair’ 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 a third-party raised issues in relation to the right of access to the site to the PAs assessment of the development. I also note the applicants' response to the FI request outlining the relevant consents. This is a civil matter. However, I would be satisfied that the provision of Section 34(13) of the Planning & Development Act, 2000 as amended, which states 'A person shall not be entitled solely by reason of a permission under this section to carry out any development' is sufficient to ensure that the civil issues is rectified prior to the commencement of development on the site.
- 7.4.2. I also note the issues raised in relation to roads and traffic, as well as the photographs submitted by third parties. In this regard, I note that the servicing of the telecommunications infrastructure will not give rise to any additional traffic, and if the proposed development is refused, the existing mast on the site will continue to be serviced. The applicant notes that servicing of the equipment amounts to approximately 10 visits, by 1 van per year. I do not consider this to be excessive or unreasonable.
- 7.4.3. 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.
- 7.4.4. While I note the third-party comments with regard to the health implications associated with masts, I refer to the provisions of Circular Letters PL07/12 and PL01/2018. As such, these are not matters for the Board.

7.5. Appropriate Assessment

- 7.5.1. The subject site is not located within any designated site. The closest Natura 2000 site lies approximately 400m to the south being the Lough Gash Turlough SAC, Site Code 000051. The Lower River Shannon SAC, Site Code 002165 and the River

Shannon and River Fergus Estuaries SPA, Site Code 004077 are located approximately 2.7km to the west of the site.

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 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,
- (c) Circular Letter PL/07/12, issued by the Department of the Environment, Community and Local Government in October, 2012,
- (d) Circular Letter PL/01/2018, issued by the Department of the Environment, Community and Local Government in February, 2018,
- (e) the planning history of the site,
- (f) the nature and scale of the proposed development,
- (g) the submissions and observations received, and
- (h) 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 18th 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.

A. Considine

Planning Inspector

20th June, 2021