



An
Bord
Pleanála

Inspector's Report ABP-310093-20

Question	Whether the erection of a mobile phone antennae to the rear of The Address Hotel is development and is or is not exempted development
Location	The Address Hotel, Military Road, Cork City
Planning Authority	Cork City Council
Planning Authority Ref.	R648/21
Referral	
Referred by	Cork City Council
Date of Inspection	21 st September, 2021
Inspector	Kevin Moore

1.0 Introduction

- 1.1 Ms. Deborah Murphy, 2 Alexandra Terrace, Military Hill, Cork, applied to Cork City Council in March 2021 for a section 5 declaration on whether the erection of mobile phone antennae to the rear of The Address Hotel, Military Road, Cork constituted development and, if so, was it exempted development. On 21st April, 2021, Cork City Council made a submission to the Board, under section 5 of the Planning and Development Act, seeking a declaration on whether the erection of mobile phone antennae to the rear of The Address Hotel, Military Road, Cork is development and, if so, is it exempted development.

2.0 Site Location / Project Description

- 2.1 The Address Cork Hotel is located at Military Road, Cork City, comprising a 19th Century, four-storey structure which is listed in the National Inventory of Architectural Heritage (NIAH). 6 no. antennae and a link dish have been erected on top of the three-storey mansard-style roof structure on the north-eastern wing of the hotel.

3.0 The Question

- 3.1 The question before the Board is:

Whether the erection of mobile phone antennae to the rear of The Address Hotel is development and, if so, is it exempted development.

4.0 Planning History

P.A. Ref. 08/33223

Permission was granted for a single-storey extension to the western side of the hotel.

P.A. Ref. 08/33171

Permission was granted for alterations to condition no. 3 of previously approved permission 24534/00

P.A. Ref. 08/32971

Permission was refused for alterations to condition 3 of previously approved permission 24534/00.

ABP Ref. PL 28.124974 (P.A. Ref. 00/24534)

Retention permission was granted for an office, demolition of conference room, a link connecting existing buildings, minor alterations, construction of a part single storey / part two storey block to the north of the main building.

P.A. Ref. 96/20173

Permission was granted for change of use from nursing home to a hotel.

Enforcement Ref. E-827

This is an enforcement file relating to the subject antennae structures. The planning authority closed the file, taking the view that the structures constituted exempted development.

4.0 The Referrer's Submission

4.1 The following is submitted from Cork City Council:

- The erection of antennae structures is development, having regard to the definitions of 'works' in section 2(1) and section 3(1) of the Planning and Development Act.
- The subject antennae appear to be exempted under Article 6 and Class 31(k) of Part 1 of Schedule 2 of the Planning and Development Regulations, being the carrying out by a statutory undertaker to provide a telecommunications service of development consisting of the provision of works under this Class.

Details submitted with the referral included notification from the undertaker and site location map.

5.0 Submission from Deborah Murphy

5.1 Deborah Murphy's house is located opposite the location where the antennae are erected. She provided details on the site context, background to the referral and lack of communication with her from the parties involved. The concerns relating to the antennae are the proximity to her house, the number of antennae, landscape impact, devaluation of her property, and potential long-term health impacts. Reference is also made to the land use zoning for this location, planning history, and precedent for further development arising from possible co-location.

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 – ...
 - (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

Schedule 2

Part 1 Exempted Development – General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development by statutory undertakers</i> Class 31 The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of - ...</p> <p>(k) antennae attached to the following existing structures –</p> <ul style="list-style-type: none">(i) public or commercial buildings (other than education facilities, childcare facilities or hospitals) by way of attachment to roofs, facades, chimneys, chimney pots or vent pipes;(ii) telegraph poles, lamp posts, flag poles, CCTV poles;(iii) electricity pylons.	<ol style="list-style-type: none">1. The antennae shall be attached directly to the structure (other than a structure with a flat roof) and not by way of a supporting fixture.2. In the case of a structure with a flat roof, a supporting fixture may be used provided that –<ol style="list-style-type: none">(a) the fixture does not exceed the height of any existing parapet or railing on the roof by more than 2 metres, and(b) access to the roof is not available to any person other than a person authorised by the statutory undertaker.3. Where an antennae is attached to the façade of a building or the exterior of a chimney or vent, the colour of the antennae shall match and blend with the colour of such façade, chimney or vent pipe.4. Where the antennae is hidden inside a chimney pot the existing chimney pot may be replaced by a chimney pot in a suitable material which shall be the same colour, size and shape as the replaced pot, and the antennae shall not protrude beyond the top of ten chimney pot.5. The planning authority in whose functional area the structure on which the antennae will be attached is situated shall be notified by the statutory undertaker in writing of the proposed location of any

	<p>such structure at least 4 weeks before such attachment.</p> <p>6. The final strength of any such antennae shall not result in the field strength of the non-ionising radiation emissions from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulation.</p>
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

7.0 Assessment

7.1 The Question of Development

7.2.1 The erection of the antennae would include the fixing of the antennae and the associated telecommunications infrastructure and cables to the roof of the hotel. Such works would include acts of construction and would also include alteration to the roof which would come within 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.

7.3 The Question of Exempted Development

7.3.1 *Statutory Undertaker*

The first issue that requires clarification is to determine whether CK Hutchinson Networks Ireland 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 Appendix 2 of the planning authority's referral to the Board, which consists of a 'Notification from Undertaker' to address Condition/Limitation 5 of Class 31(k) of Schedule 2 of the Planning and Development Regulations. I acknowledge that the planning authority is satisfied that CK Hutchinson Networks Ireland is a statutory undertaker for the purposes of the Planning Act. I am aware that CK Hutchinson Networks Ireland is a telecommunications and internet service provider directly associated with the operations of Three Ireland.

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.

7.3.2 Section 4 of the Planning and Development Act

I note the provisions of section 4 of the Planning and Development Act. 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.

7.3.3 *Planning and Development Regulations 2001, as amended*

I note the provisions of Article 6(1) of the Regulations. The referrer alludes to Article 9(1)(a)(vi) in Appendix 1 of its submission to the Board. This relates to interference by a development with landscapes, views and prospects which are an objective of a development plan to preserve. This is not a relevant consideration as landscapes, views and prospects are not applicable to the site of the proposed development.

I note, however, the provisions of Article 9(1)(a)(xii), which is as follows:

“further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area”

The site relating to this referral lies immediately north of and outside of Wellington Road/St. Luke’s Architectural Conservation Area (ACA) as designated in the current Cork City Development Plan 2015-2021. Deborah Murphy resides in Alexandra Terrace which is to the north of, and further removed from, the ACA. Under the Draft Cork City Development Plan 2022-2028, it is proposed to extend this ACA to the north. The proposed extension of the ACA would include the site the subject of the referral and the houses to the north, including Alexandra Terrace. As an aside, it is further noted that The Address Hotel is listed in the National Inventory of Architectural Heritage (Reg, No. 20863054), with categories of special interest being architectural, artistic, historical and social.

Having examined this site and its environs and the visibility of the subject antennae and associated infrastructure, I am satisfied to conclude that this development consists of works to the exterior of a structure that is located within an architectural conservation area in the Draft Cork City Development Plan 2022-2028. Furthermore, I am satisfied to determine that the antennae constitute prominent structures that may reasonably be viewed as being not in character with the building on which they are placed. The visual prominence of these structures extends well beyond the site of the hotel to the neighbouring streets. It would be reasonable to determine that the antennae materially affect the character of the area, which is proposed to be included in the Wellington Road/St. Luke's Architectural Conservation Area in the Draft Cork City Development Plan.

Finally, I note the provisions of Class 31(k) of Part 1 of Schedule 2 of the Planning and Development Regulations and its associated conditions and limitations. My considerations on the conditions and limitations are as follows:

1. The antennae shall be attached directly to the structure (other than a structure with a flat roof) and not by way of a supporting fixture.

This is not applicable as the antennae are attached to a flat roof.

2. In the case of a structure with a flat roof, a supporting fixture may be used provided that –

(a) the fixture does not exceed the height of any existing parapet or railing on the roof by more than 2 metres, and

(b) access to the roof is not available to any person other than a person authorised by the statutory undertaker.

I note that the roof is accessible from the upper level of the hotel. The roof design presents as one of a mansard-style that is flat on top on which the antennae are

erected. There is no railing or parapet on this section of the hotel's roof. The antennae project more than two metres above the flat roof.

3. Where an antennae is attached to the façade of a building or the exterior of a chimney or vent, the colour of the antennae shall match and blend with the colour of such façade, chimney or vent pipe.

The antennae are not attached to the façade of the building or the exterior of a chimney or vent.

4. Where the antennae is hidden inside a chimney pot the existing chimney pot may be replaced by a chimney pot in a suitable material which shall be the same colour, size and shape as the replaced pot, and the antennae shall not protrude beyond the top of ten chimney pot.

The antennae are not hidden inside a chimney pot.

5. The planning authority in whose functional area the structure on which the antennae will be attached is situated shall be notified by the statutory undertaker in writing of the proposed location of any such structure at least 4 weeks before such attachment.

I acknowledge the letter submitted to planning authority by CK Hutchinson Networks Ireland on 27th November, 2020.

6. The final strength of any such antennae shall not result in the field strength of the non-ionising radiation emissions from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulation.

I acknowledge that meeting with this condition/limitation would be subject to control set by the Director of Telecommunications Regulation.

Appropriate Assessment

It is reasonable to conclude that, on the basis of the information on the file relating to the nature and extent of the proposed telecommunications 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.

9.0 CONCLUSION AND RECOMMENDATION

WHEREAS a question has arisen as to whether the erection of mobile phone antennae to the rear of The Address Hotel is development and, if so, is it exempted development.

AND WHEREAS the said question was referred to An Bord Pleanála by Cork City Council on the 21st day of April, 2021:

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)(xii),
- (c) Part 1 of Schedule 2 *Exempted Development – General* of the Regulations, with particular reference to Class 31(k), and
- (d) the provisions of the Draft Cork City Development Plan 2022-2028:

AND WHEREAS An Bord Pleanála has concluded that the installation of the antennae consists of works to the exterior of a structure that is located within a

proposed architectural conservation area in the Draft Cork City Development Plan 2022-2028 and which materially affect the character of the proposed architectural conservation area:

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that the erection of mobile phone antennae to the rear of The Address Hotel is development that is not exempted development.

Kevin Moore
Senior Planning Inspector
29th September, 2021