



An
Bord
Pleanála

Inspector's Report

ABP-310531-21

Development	Construction of a 24-metre multiuser lattice tower.
Location	Leo TD, Ballyhaunis, Co Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	20737
Applicant(s)	Signal Infrastructure Limited.
Type of Application	Permission.
Planning Authority Decision	Grant Permission subject to conditions
Type of Appeal	Third Party
Appellant(s)	Sean Flynn. Thomas Gerard Flynn
Observer(s)	Joel Grennan
Date of Site Inspection	7 th February 2022.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to a rural site located within the townland of Leo, Ballyhaunis Co Mayo. The site is located circa 5km southeast of Ballyhaunis and c 1km south of the N60 National Secondary Route and 1.2km south of the main Dublin Westport railway line. The area is characterised by mixed quality agricultural land, peatland and coniferous plantations and a dispersed residential settlement pattern. The closest dwelling to the appeal site is located circa 300m to the south of the site. There is an existing telecommunications mast (*Vodafone*) circa 430m from the site.
- 1.2. The appeal site has a stated area of 0.024hectares. I note that the precise redline boundary was altered (site area reduced) during the course of the application specifically in response to the request for additional information whereby the site does not extend to the public road and a right of way access is indicated over third party lands over a distance of approximately 6m from the roadside boundary. The appeal site is open and exposed boggy land dominated by heather and bracken with visible rock outcropping. Field boundaries are defined by stone walling.

2.0 Proposed Development

- 2.1. The proposal involves the construction of a 24m high multi-user lattice tower telecommunications structure, carrying antenna and dishes enclosed within a 2.4m high palisade fence. Access is proposed off the local road. Application details indicates that the site is designed as multiuser site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1 By order dated 20th May 2021 Mayo County Council issued notification of the decision to grant permission and 5 standard conditions were attached.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

Planner's initial report sought additional information with regard to the applicant's legal interest and consent with respect to carrying out the development, details of access, haul routes and construction arrangements. Co-location possibilities to be further explored and additional photomontage points and visual impact assessment. Composite site layout plan of a suitable scale and clearly dimensioned drawings. Clarification required on extent of provision from the site and service coverage predictions. Details of electrical power supply. Consultation with Irish Water regarding watermains along road verge. Colour and finish of structure and landscaping and decommissioning plan.

The Planner's second report considered the response to further information request to be acceptable. Permission was recommended subject to conditions as per subsequent decision.

3.2.2. Other Technical Reports

Area Engineer' report noted surface and structural defects in the local road and that the applicant does not have control of the access. Haul roads and construction phase details to be outlined. Consultation required with Irish Water and provision for warning signage during construction.

3.3. Prescribed Bodies

No submissions.

3.4. Third Party Observations

3.4.1 A number of third-party submissions from the following third parties:

- Thomas Clifford, 201 Alnwick Road, Lee London (owner of the lands occupied by the existing Vodafone mast.)
- Michael Hynes, Leo, Ballyhaunis
- Ann Ui Laighlin, Árd Aoibhinn, Leamh. Beal Atha hAmhnais.

- John and Margaret Lyons, Leo Ballyhaunis.
- Tom Lyons, Leo. Ballyhaunis.
- John Frances and Fiona Lyons. Leo, Ballyhaunis.
- Joe Grennan, Leo
- Niamh Grennan, Leo
- Maureen and John Dalton, Loughill, Ballinlough Roscommon.
- Entrust Planning and Environmental on behalf of AP Wireless Ireland Investment Ltd. Co-location on the existing 24m high structure located 430m away.
- Rita and Kieran Cunnane, Loughill, Ballinlough Co Roscommon.
- John & Fionnuala Parr Leo, Ballyhaunis.
- Glenys Stone, Coolatinny, Ballinlough.
- Thomas Gerard Flynn, Laughill. Ballinlough, Co Roscommon.
- Seann Flynn Loughill, Ballinlough Co Roscommon.
- Nancy Flynn Loughill Ballinlough Co Roscommon.
- Petition of signatories expressing opposition to the proposal.

3.4.2 The submissions raise a number of common and specific issues which I have summarised as follows:

- Need for the mast is questioned. The existing Vodafone mast in close proximity is available for colocation.
- Issues regarding right of way. No consent given by owner of the lands Mr Sean Flynn to the creation of a new entrance or a new access over his lands to enable their use for non-agricultural purposes.
- Area is famed as an area of outstanding natural beauty with panorama extending over much of Connacht. Obtrusive siting will result in significant negative visual impact.

- Design is totally out of character with the surrounding area.
- Negative impact arising from construction traffic.
- Health risk.
- Impact on natural habitat.
- Devaluation of property.
- Site layout plan is incompatible with requirements of the Planning and Development Regulations.
- Permission 19/442 for 21m monopole in Ballinlough 3km from the site (ABP305885 20/737) not considered in the technical justification report.
- Error in visual impact study view 1 is more distant than indicated. Significant views were not considered in the visual impact study including views near dwellinghouses.
- Lack of availability of public utilities for the proposed development.
- Concerns regarding 5G dishes. Policy needs to address this issue.

3.4.3 Following submission of additional information 14 third party submissions maintain objection contending:

- Insufficient legal interest. Interference with private property.
- Health and safety issues.
- Irish Language requirements not addressed.
- Negative visual impact

4.0 Planning History

ABP Reg Ref PL16.206908 Mayo Co Council Reg Ref 033235 on a larger site area was permission for the erection of an 18m high telecommunications antenna support structure. This permission was not implemented.

5.0 Policy Context

5.1.1. Telecommunications Antennae and Support Structures - Guidelines for 5.1.Planning Authorities (1996)

These set out current national planning policy in relation to telecommunications structures and address issues relating to, inter alia, site selection; minimising adverse impact; sharing and clustering of facilities; and development control. The Guidelines are generally supportive of the development and maintenance of a high-quality telecommunications service.

At 4.3 it is stated that “the visual impact is among the more important considerations which have to be taken into account in arriving at a decision on a particular application. In most cases the applicant will only have limited flexibility as regards location, given the constraints arising from radio planning parameters. Only as a last resort and if the alternatives are either unavailable or unsuitable should free-standing masts be located in a residential area or beside schools. If such a location should become necessary sites already developed for utilities should be considered and masts and antennae should be designed and adapted for the specific location. The support structures should be kept to the minimum height consistent with effective operation and should be monopole (or poles) rather than a latticed tripod or square structure.

5.1.2. Telecommunications Antennae and Support Structures and DoECLG Circular Letter PL07/12

The 2012 Circular letter set out to revise sections 2.2. to 2.7 of the 1996 Guidelines. The 1996 Guidelines advised that planning authorities should indicate in their development plans any locations where, for various reasons, telecommunications installations would not be favoured or where special conditions would apply and suggested that such locations might include lands whose high amenity value is already recognised in a development plan, protected structures, or sites beside schools. While the policies above are reasonable, there has, however, been a growing trend for the insertion of development plan policies and objectives specifying

minimum distances between telecommunications structures from houses and schools, e.g., up to 1km. Such distance requirements, without allowing for flexibility on a case-by-case basis, can make the identification of a site for new infrastructure very difficult. Planning authorities should therefore not include such separation distances as they can inadvertently have a major impact on the roll out of a viable and effective telecommunications network.

Section 2.6 of the Circular letter refers to Health and Safety Aspects and reiterates the advice of the 1996 Guidelines that planning authorities should not include monitoring arrangements as part of planning permission conditions nor determine planning applications on health grounds. Planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matters in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process.

5.2. Development Plan

5.2.1 The Mayo County Development Plan 2014-2020 refers.

TC-01 – objective to support and facilitate ICT infrastructure subject to not having significant adverse effects on environment

TC-02 - It is an objective of the Council to locate telecommunication masts in non-scenic areas, having regard to the Landscape Appraisal of County Mayo, or in areas where they are unlikely to intrude on the setting of, or views of/from, national monuments or protected structures.

TC-03 – Co-location

Section 55 of Volume 2 sets out development control guidance for telecommunications

Landscape Policy LP-01 It is an objective of the Council, through the Landscape Appraisal of County Mayo, to recognise and facilitate appropriate development in a manner that has regard to the character and sensitivity of the landscape and to ensure that development will not have a disproportionate effect on the existing or future character of a landscape in terms of location, design and visual prominence.

The appeal site is in Policy area 4 Drumlins and Inland Lowland. This area is broadly categorised as the most robust area in terms of ability to absorb development with creating adverse impacts to landscape character. Within this framework masts area are likely to be widely conceived as normal and appropriate unless siting and design area poor.

There are no identified views and prospects in the vicinity of the site on Map 4 of the development plan.

5.3 EIA Screening

The proposed development is not of a class (Schedule 5, Part 2(10) of the Planning and Development Regulations, 2001 (as amended)). No EIAR is required.

5.4 Natural Heritage Designations

5.4.1 The site is not within a designated area the nearest such sites include:

Carrowbehy/Caher Bog Special Area of Conservation circa 5km to the northeast.

River Moy Special Area of Conservation circa 8km to the northwest.

Lough Corrib SAC 7km to the southwest

Cloonchambers Bog SAC 7km northeast

Errit Lough SAC 7km north

Derrinea Bog SAC circa 10km to northwest

Urlaur Lakes SAC circa 10km northwest

Drumalough Bog SAC 8.2km to the northeast

Coolcam Turought SAC 8km southeast

Williamstown Turloughs SAC 8.4km southeast.

6 The Appeal

6.1 Grounds of Appeal

6.1.1 There are two third party appeals by:

Thomas Gerard Flynn, Laughil, Ballinlough Co Roscommon

Seán Flynn, Loughill, Ballinlough, Castlerea, Co Roscommon.

6.1.2 The appeal submissions include a number of enclosures including maps and photographs to elucidate the case made. Grounds of appeal which raise common and specific issues are summarised as follows:

- No consent to make the application was granted by the landowners affected by the proposed entrance and access.
- Development would involve overuse and / or surcharge on a right of way beyond its extent and would perhaps amount to excessive use.
- Land folio MY64542F, of which the site forms part, was purchased in October 2010. At the time of purchase there was no right of way registered with the property registration authority. 10 years later an agricultural right of way was applied for and easement registered with the property registration authority.
- Site layout plan is incomplete inaccurate and apparently non-compliant with planning legislation
- The technical justification document dated 16 July 2020 received 7th October 2020 was and remains outdated and omitting relevant and significant information
- Proposed development site is inaccessible for construction traffic, unfeasible and unbuildable.
- Proposed Site access and agricultural right of way are seemingly misaligned.
- Proposed development would be imposing, commanding, and jarring on a naturally pristine and unspoilt landscape and would contravene objective LP-01 Landscape Protection of the Mayo County Development Plan 2014-2020.

- Several items of important information were not addressed in the response to the request for further information. Contradictory and outdated information.
- Specified time period to make submission or observation on the significant further information was cut short at short notice thereby infringing third party rights.
- No geotechnical study, structural analysis or ground investigation has been provided. Peaty waterlogged soil is inaccessible. Excavations in bog and peat could throw up unforeseen ground conditions and problems such as ground movement shift and drainage issues. Potential impact on water supply.
- Alterations to site layout during the course of the application including alterations of redline site boundary where access is outside the boundary.
- Application does not comply with Article 23(1)(a) of the Planning and Development Regulations 2001.
- Technical justification document dated 16th July is outdated and omits some relevant and significant information including permission for 21m mast in Ballinlough Co Roscommon - 3km from the site. (ABP Ref305885-Roscommon Co Co Ref 19/442)
- *Comreg* search within 12km of the location indicates good coverage.
- The proposed development as permitted is inaccessible for construction traffic and unbuildable. Access road is outside the site boundary.
- Quality of the photography in the visual impact appraisal is inadequate. Significant negative impact on the landscape.
- Power supply options would further detract from the amenity of the area.
- Proposal would potentially lead to a proliferation. Not addressed in further information response. No evidence provided to demonstrate that the existing Vodafone mast is not suitable.

6.2 Planning Authority Response

The Planning Authority did not respond to the appeal.

6.3 First Party Response.

6.3.1 The response by 4 Site on behalf of the first party is summarised as follows:

- Signal is Ireland's fastest growing telecommunications infrastructure provider with expertise in delivering tower sites and fibre infrastructure to ensure network operators can provide superior connectivity to their users.
- Right of way over the area identified on the maps has been registered with the property registration authority. Affidavit of Mr McGreal lodged for registration confirms that the right of way was utilised by foot and also by vehicle.
- Letter of consent provided in the application is sufficient to meet the requirements under Article 22(2)(g) of the Planning and Development Regulations 2001 as amended.
- Lands in Foilío MY4936OF do not form part of the development boundary. The red line boundary was amended to reflect this.
- In accordance with Section 34 (13) of the Planning and development Act 2000 as amended, the applicant will not undertake works without confirmation on legal entitlement as to do otherwise would put in jeopardy investment on part of the applicant as well as investment made by the operators who will install equipment on the site.
- Requirement for a new site at Leo Td is detailed in the technical justification report prepared by Vilicom. Need for the site demonstrated in letters of support from network operators Three and Imagine.
- Coverage maps indicate the extent of Eir and Three's coverage footprint in Leo and surrounding environs. The maps indicate that the area surrounding the site achieves a 4G coverage of fair for Eir and Three. This is a level of service that is below standard for consumers and business users.
- Lattice type structures are an industry standard method of support as they are structurally capable of supporting significant loads of both equipment and environmental loads without movement.
- The nearest site to Leo a single operator site 370m away is a Vodafone only site and is not suitable to be used by additional operators. Vodafone currently

occupy the top of the tower. Any additional antennas that could be added below this would be obstructed by nearby trees and would not allow coverage to reach the surrounding area. The site is not suitable for use for multi operator coverage.

- Single operator in Ballinlough is approximately 3.3km away. The site is occupied by Vodafone on a building and is not suitable for multiple operator employment due to lack of suitable space and height. Coverage will not reach target area.
- The nearest multi-operator mobile site is at Ballyhaunis, 5.5km away and is too far from the target coverage areas.
- Structure will enable a significant improvement in choice of voice and broadband service in Leo and the immediate surrounding areas including a section of the N60 National Road, part of the Dublin – Westport rail line a number of local roads and business, residential houses, and transport stops. The proposed structure will allow multiple network operators to deploy 2G voice, 3G and high speed 4G broadband services.
- The proposed development is an unmanned telecommunications installation which is remotely monitored and controlled via the communications networks. Once operational operation and maintenance engineers will visit the site on average 2-8 times per year.
- During the construction phase which will be over a period of 2-4 weeks additional vehicle will be using the road entrance and so the appropriate temporary traffic management plan will be put in place during this timeframe.
- Extensive survey undertaken on the site, and it was deemed that the physical condition of the site is adequate to cater for the development as proposed.
- On review of the maps shown in the appeal there does appear to be a slight misalignment with the access track shown in the planning drawings and that registered with property registration authority however there is no question that the access in question is provided into the site providers landholding and so the applicant will have access to the proposed development for both construction and operational phase.

- Regarding impact on the landscape in the context of Objective LO-01 Landscape protection of the Mayo County Development Plan 2014-2020. A photomontage with supporting visual impact assessment was submitted as part of the planning application along with a revised photomontage and included additional views from residential dwellings in the vicinity of the site as part of the further information request.
- The proposed development is expected to be visible and exposed from views close to the structure. Views of the installation from residences in proximity of the structure will be limited in nature as illustrated in the photomontage. Wider and more distant public views are restricted towards the site due to distances, landscaping, and topography. The site is not in proximity of any scenic routes or designated views.
- It is unlikely given the costs, risks, delays involved in building an installation that there would be a saturation of large antenna support structures in Leo. Rather the network operators will utilise existing support structures where suitable and available.
- New sites are added to the network and existing sites and equipment decommissioned on a regular basis. Design is based on a built to suit policy. Once built the tower will be offered to other wireless network providers.
- Regarding geotechnical study if permission is granted a ground investigation report will be carried out prior to commencement of development.

6.4 Observations

6.4.1 A number of observers made submissions in support of the third party appeals from the following:

Tomas Clifford, 201 Alanwick Road, Lee London.

Michael Hynes, Leo, Ballyhaunis.

Thomas Lyons, Leo. Ballyhaunis.

Ann Uí Laighin, Ard Aoibhinn, Leamh, Béal Átha hAmhnais, Co Mhaigh Eo.

Joel Grennan, Leo, Ballyhaunis.

Niamh Grennan, Leo, Ballyhaunis.

John and Margaret Lyone, Leo Ballyhaunis

John Francis and Fiona Lyons, Leo, Ballyhaunis.

Maureen and John Dalton. Loughill Ballinlough Roscommon.

Ann Nancy Flynn, Loughill, Ballinlough. Roscommon.

Rita and Kieran Cunnane, Loughill, Ballinlough.

6.4.2 Observer's support the third party appeals and raise a number of common and particular issues which I have summarised as follows:

- Proliferation of masts. Failure to comply with policy regarding sharing and co-location
- Mast available in the vicinity with capacity for additional equipment
- Justification report is out of date
- Blight on the landscape
- Area of Archaeological Significance. Ancient bog oak stumps. Stone age implement making factory at Hill of Killtullagh.
- Mayo County Council failed to take full consideration of the Mayo County Development Plan.
- ESB power supply is unclear and additionally obtrusive.
- Letter of consent regarding access not demonstrated. No existing access by mechanical means.
- No ecological assessment - Negative impact on local wildlife,
- Construction details not demonstrated
- Unsatisfactory planning process. Fairness deficit - timeframe for third parties to make submissions cut short from 12th to 10th May.
- Need for the mast is not demonstrated. Local search demonstrates good coverage.

- Radiation and noise.
- Devaluation of property.
- Failure of Mayo County Council to address the Official Languages Act.
Requirement to provide a response to submission As Gaeilge was not fulfilled with acknowledgement provided in English.

7 Assessment

7.1 Having reviewed the grounds of appeal I consider that it is appropriate to address the appeal under the following broad headings.

- Legal and Procedural Issues
- Principle of development - Need for the development and assessment of alternatives
- Visual impact & impact on residential and other amenities of the area
- Appropriate Assessment

7.2 Legal and Procedural Matters.

7.2.1 I note that the matter of the applicant's legal interest in the site and ability to carry out the development as proposed is vehemently contested by the third-party appellants particularly Sean Flynn owner of the land over which access to the site is proposed. The matter was raised by the Planning Authority in the request for additional information and in response significant alterations were made to the site boundary resulting in the exclusion of the section of land, between the site and the public road, which is owned by the third-party appellant Sean Flynn. Based on extensive submissions Mr Flynn clearly does not consent to the carrying out of works for the provision of an entrance. Whilst the application as initially submitted included within the description "associated site works including new entrance and new access track." In response to the request for additional information it was outlined in cover

letter that “The strip of land between the L55734 and the proposed development will be used to provide vehicular access only. A proposed 3m Wide Site Access Track (Approx. Length 26m) will be provided within the site provider’s land ownership.”

7.2.2 The appeal submission of the third-party appellant Thomas Gerard Flynn further notes the apparent misalignment of the registered right of way with the appeal site redline boundary. This supports the argument that the application is not implementable. The third-party submissions also note that there is no existing access by mechanical means. Whilst the first party in response refers to Section 34(13) of the Planning and Development Act as amended, I consider that the submissions of the first party do not adequately address the issue. The proposal would clearly involve works on lands outside the redline boundary for the provision of the access and sightlines. On the basis of the submissions made I am not satisfied that it has been demonstrated that the application is made by a person who has sufficient legal estate or interest to carry out the proposed works on the land or the approval of the person who has such sufficient legal estate or interest.

7.2.3 I note that the third-party appellants and observers raise concerns regarding technical and procedural matters with reference specifically to the validation of the original application on the basis of a number of identified deficiencies including the incomplete site layout plan, alteration of the nature of the development (most notably site extent) during the course of the application to the local authority and failure to respond to all matters raised in the request for additional information. Questions are also raised with regard to the timeliness of the notification of third parties regarding further information and the timeframe allowed for third party submissions which was apparently cut short by two days in the second notification letter issued to the parties. The third parties thus question the procedures of the local authority and the fairness in the process. I note that one of the observers is critical of the Local Authority in terms of its obligations under the Official Languages Act 2003. I note that procedural matters are not matters for the Board in terms of the appeal but rather are the preserve of the courts. I would comment from the extensive submissions of the third-party appellants and observers with respect to the proposal as modified during the course of the application it is evident that third parties exercised their rights in terms of participation in the planning application process.

7.3 Principle of Development – Need for the Development and Assessment of alternatives

7.3.1 Having regard to the National Policy as set out in the 1996 Guidelines

Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities and Circular Letter PL07/12 Telecommunications Antennae and Support Structures which promote the provision of modern telecommunications infrastructures, and to policies within the development plan including TC-01 the objective to support and facilitate ICT Infrastructure subject to not having significant adverse effects on environment, it is considered that the provision of a telecommunications mast at the site should be considered to be acceptable in principle subject to detailed proper planning and sustainable development considerations.

7.3.2 As regards issues raised with respect to the need for the mast and the assessment of alternatives, the first party outlines that the existing Vodafone structure is compromised by adjacent trees and is not suitable for co-location. As regards alternative locations a number of existing structures considered were discounted on the basis of structural issues and technical requirements. The first party also provides letters of support from operators Eir, Three and Imagine. The justification report by Vilicom indicates that the area shows poor multi-operator coverage along the N60 and Dublin – Westport rail line. The applicant also refers to Comreg Maps to make the case that the outdoor coverage maps indicate a level of service with regard to outdoor coverage is below the required standards. The third parties are critical of the failure to address the recently constructed site at Ballinlough (21m high multiuser monopole permitted by the Board under ABP-305885) and the first party did not update alternative options study in response. The first party submits that the proposal is a 'built to suit' project and that it is unlikely, given costs and timeframes, that a proliferation or an excessive number of such structures would be provided. It is outlined that new sites are added, and equipment decommissioned on a regular basis as change is inherent to the industry and service.

7.3.3 Having deliberated on the matter, I consider that in light of the submissions by the first party the need for the mast has been demonstrated. As regards mast sharing

and co-location, I note that the application indicates that the proposed new structure will accommodate site sharing. I cannot verify the technical circumstances and requirements in relation to siting and coverage requirements; however, I consider that based on the evidence provided the proposal seeks to optimise the location and siting of the structure and to maximise the potential for future mast sharing and co-location which accords with national and local policy.

7.4 Visual impact, impact on archaeology and impact on the amenities of the area

7.4.1 The “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities” published by the Department of the Environment in 1996 as noted, state that visual impact is one of the more important considerations which have to be taken into account. The Guidelines advocate a sequential approach with regard to the identification of suitable sites for telecommunications installations. The Guidelines recommend that great care be taken when dealing with fragile or sensitive landscapes, with other areas designated or scheduled under planning and other legislation, for example, Special Amenity Areas, Special Protection Areas, the proposed Natural Heritage Areas and Special Areas of Conservation and National Parks. Proximity to listed buildings, archaeological sites and other monuments should be avoided.

7.4.2 The third-party appellants and observers contend that the proposal will significantly injure the visual amenity of the area. The application site is located in an area designated in the County Development Plan as Policy area 4 Drumlins and Inland Lowland. This area is broadly categorised as the most robust area in terms of ability to absorb development with regard to creating adverse impacts to landscape character. Within this framework masts are likely to be widely conceived as normal and appropriate unless siting and design are poor. There are no identified views and prospects in the vicinity of the site on Map 4 of the development plan.

7.4.3 Having regard to the scale and design of the 24m high lattice structure and the landscape character of the area it will clearly be a notable and visible feature in the landscape. In assessing visual impact, I consider that visibility per se is not in itself objectionable, and telecommunications structures are now a customary type of

infrastructure within the contemporary rural landscape. The question to be addressed is whether the structure would be visually dominant and obtrusive. I note that while the structure would be locally prominent it would be intermittently visible within the wider landscape and would not be unduly dominant and obtrusive. On the matter of the submitted photomontage images, I would tend to concur with the third party appellants that the quality of the images is poor however I am satisfied that the information provided enables the assessment of the visual impact arising. In overall terms I consider that the impact on the landscape is within acceptable limits. I do not consider that injury to visual amenity presents as a reason for refusal.

- 7.4.4 As regards potential for devaluation of property no evidence is provided to support this contention. On the matter of health and safety concerns in line with the ministerial guidelines and as specifically clarified in the ministerial circular of 2012 such matters are regulated by a separate code and are not a planning matter.
- 7.4.5 As regards archaeological impact I note that there are no recorded archaeological monuments in the immediate vicinity. There are a number in the local area including an ancient monastic foundation and graveyard RO02878 and RO02877 within 400m to the northeast. A field system MA06762 and MC06770 Hut site within 300m to the southwest. I consider that mitigation by way of archaeological monitoring would be required.
- 7.4.6 On the issue raised with regard to the absence of geotechnical study / hydrogeological study in light and concerns with regard to structural capacity and potential for ground movement and drainage issues, I note that the first party outlines that following extensive survey of the site it was deemed that the physical condition of the site is suitable for the development as proposed and in the event of permission further ground investigations will be carried out prior to commencement of development. I refer to the lack of clarity with regard to the access from the public road and as outlined above the provision of an entrance and access from the public road would require works outside the boundaries of the site.

7.5 Appropriate Assessment

7.5.1 On the matter of Appropriate Assessment having regard to the nature of the development and the separation distance to any European site, and based on the source pathway receptor model 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 any other plans or projects on a European site.

8.0 Recommendation

Refuse permission for the following reasons:

Reasons and Considerations

On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has

- (a) Sufficient legal estate or interest in the land the subject of the application to enable the person to carry out the proposed works on the land, or
- (b) the approval of the person who has such sufficient legal estate or interest,

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

Bríd Maxwell
Planning Inspector
25th March 2022