



An
Bord
Pleanála

Inspector's Report ABP 310700-21

Development	To erect a 15m high monopole telecommunications support structure together with antennas, dishes and associated equipment.
Location	Eir Exchange, rear of Garda Station, Main Street, Ballinagh, Co. Cavan.
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	21/205
Applicant(s)	Eircom Limited
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Eircom Limited
Observer(s)	None
Date of Site Inspection	11 th November 2021
Inspector	Brendan Coyne

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1.0 Site Location and Description

1.1. The site (0.005 Ha) is located within an existing Eir exchange compound, to the rear of a Garda Station on the north-western side of Main Street, Ballinagh in Co. Cavan. The site contains an existing exchange building and a 10m high wooden pole carrying telecommunications equipment. The site is accessed via a laneway to the southern side of the Garda Station which also provides access to a detached single storey dwelling, located c. 5.8m to the north of the compound. A row of semi-detached two storey dwellings along Seangharrai Drive is located on adjoining lands to the rear / north-west of the site. The exchange building is setback c. 25m behind the Garda Station. Ballinagh Mission Hall is located to the north of the Garda station and a row of residential dwellings is located to the south of the station. Hedging is planted along the north-western boundary of the site and semi-mature trees are planted along the south-western boundary. A low rise timber and post fence defines the northern boundary.

2.0 Proposed Development

2.1. The proposed development comprises the following;

- The erection of a 15m high monopole telecommunications structure with associated antennae, dishes and associated equipment.
- All ancillary site works.

The development will form part of Eircom Ltd. existing telecommunications and broadband network.

3.0 Planning Authority Decision

3.1. Decision

Cavan County Council REFUSED permission for the proposed development. The reasons for refusal were as follows;

1. It is considered that the scale and design of the proposed telecommunications structure would have an adverse impact on the visual and residential amenities of

the area, would set an undesirable precedent for future development of this nature, would be contrary to Objective PO120 of the Cavan County Development Plan 2014 - 2020, which states 'masts will only be permitted within towns and villages of the County when accompanied by satisfactory proposals for dealing with disamenities and incompatible locations', and would be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development would be contrary to the stated objectives PLO118, PLO122 and PLO125 of the Cavan County Development Plan 2014 - 2020, in relation to reasoned justification for the proposed development in terms of co-sharing and clustering and would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The Planning Authority is not satisfied on the basis of the information submitted that the applicant has sufficient legal interest in the lands to carry out the proposed development and as such the Planning Authority is precluded from granting the proposed development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Basis for the Planning Authority's decision. Includes:

- The overall height of the proposed telecommunication structure including the lighting finial is 16.5 meters.
- The proposal includes antenna, dishes and associated equipment.
- The site is located c. 50m to the west of Main Street and is zoned 'Town Core' in the Cavan County Development Plan 2014-2020.
- A telecommunications communications structure is neither listed as 'permitted in principle' or 'not permitted' under 'Town Core' zoned lands.
- The site is bound to the east by the Garda Station, a residential dwelling to the north, Seangharrai Drive housing development to the West and a row of town houses / commercial properties to the south.

- Coverage issue identified by Eir for its 4G rollout has been sufficiently demonstrated, particularly in the ComReg map submitted.
- No information is provided of other network providers or their coverage needs.
- There may be alternatives including more suitable and optimal locations that could be identified on a more collaborative basis with the other providers.
- The site is already developed for utilities accommodating the Eircom Exchange network. The site contains an existing 10m high wooden pole with operators equipment.
- Permission was refused in 1998 for a 30m telecommunications structure on the site.
- The applicant has not submitted sufficient information demonstrating compliance with Objectives PIO18 and PIO 25 of the Development Plan with regards justification and co-location.
- The proposed development is significantly different in terms of scale and visual impact from the existing structure on the site, and therefore must be determined on its own merits.
- The site is zoned Town Core and is directly overlooked on two sides by residential development.
- Part of the Town Core zoning objective is to ensure that any new development would have a minimal impact on the established residential amenity of the area. The proposed development would not achieve this.
- The proposal would have an overbearing impact on a number of dwellings, particularly the dwelling located c. 12m to the northeast and dwellings along Seangharrai Drive.
- The proposed monopole would be 12m and 21m respectively from the building lines of the two closest dwellings to the north and west.
- The proposed development would be a prominent feature on Main Street which would have a negative impact on the streetscape/townscape at this location.
- No visual impact assessment was submitted with the application.

- The Commissioner of Public Works in Ireland objects to the proposed development as consent has not been given or sought for the proposed development on their lands.
- The site is located within the buffer zone for Lough Oughter and Associated Loughs SAC and Lough Oughter SPA. It is considered that the proposed development would not have a significant effect on these designated sites and a screening report for Appropriate Assessment is not considered necessary.

3.2.2. **Other Technical Reports**

No internal reports received.

3.2.3. **Prescribed Bodies**

Office of Public Works: The Commissioners of Public Works (CPW) in Ireland are the registered owners of these lands. Land Registry Folio / details provided confirming same. The CPW have not given Eircom Limited permission nor have the applicants sought permission for this planning application. Land Registry Folio / details provided confirming same.

4.0 **Planning History**

P.A. Ref. 15/11 Permission GRANTED in 2015 to Vodafone Ireland Ltd. for the retention of an existing telecommunications support pole 10.5m high with antenna, equipment cabinet and associated equipment within the Eircom Exchange compound. The development forms part of Vodafone Ireland Ltd.'s existing GSM and 3G Broadband telecommunications network.

P.A. Ref. 09/358 Permission GRANTED in 2009 to Vodafone Ireland Ltd. for the retention of an existing telecommunication support pole 10.5 metre high with antenna, equipment cabinet and associated equipment within the eircom exchange compound. The development forms part of Vodafone Ireland Limited's existing GSM and 3G Broadband telecommunications network behind the Garda station.

P.A. Ref. 04/1269 Permission GRANTED in 2004 to Vodafone Ireland Ltd. for the retention of a 10.5 metre high support pole and antennae which is used for mobile communications purposes.

P.A. Ref. 99/263 Permission GRANTED in 1999 to Eircell Ltd. to retain support pole and antenna for mobile communications.

P.A. Ref. 98/580 Permission REFUSED in September 1998 to erect a 30 metre high triangular mast with additional antennae and cabin for use by Esat Digifone and Garda Siochana for communication purposes. The reason for refusal was as follows;

1. The proposed development will have a significant visual impact in an area predominantly residential in character and the development, being located within 22 metres of dwelling houses, will be a serious injury to the amenities afforded to the occupants of properties in the vicinity of the site.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1. Cavan County Development Plan 2014-2020 is the statutory plan for the area. The following provisions are considered relevant:

Zoning: The site is zoned 'Town Core'.

Zoning Objective: 'Establishes the extent of the town core and identifies the most suitable location for a mix of retail, commercial, residential, cultural and social uses. The overall aim is to strengthen the vitality and viability of the town core by actively facilitating the reuse of existing buildings, as well as, brownfield and Greenfield sites. The emphasis will be on high quality urban design which does not detract from the existing urban framework'.

Use Class: The use class telecommunications structure is not listed under this zoning objective. The Development Plan states that non-listed uses that are proposed may be considered, if supported in the context of the proper planning and sustainable development of the area.

Zoning of Adjoining Lands: Adjoining lands to the north-west are zoned 'Whitelands' where the objectives states that 'this zone is for mixed use development outside of Town or Village Cores. This zone is to cater for the continued growth and development of Small Towns and Villages whilst recognising their main function which is to support and provide services for the local population'.

Section 4.8 Telecommunications and Information Technology - Relevant policies include the following:

PIO118 To encourage the co-location of antennae on existing support structures and to require documentary evidence, as to the non-availability of this option, in proposals for new structures. The shared use of existing structures will be required where the numbers of masts located in any single area is considered to be excessive. The Planning Authority will generally consider any location with three or more separate support structures as having no remaining capacity for any further structures.

PIO120 Masts will only be permitted within towns and villages of the County when accompanied by satisfactory proposals for dealing with dis-amenities and incompatible locations.

PIO121 Masts will only be permitted if supported by an acceptable 'Visual and Environmental Impact Assessment Report'.

PIO122 Shared use of existing support structures will be preferred in areas where there are a cluster of masts.

PIO125 To submit a reasoned justification as to the need for the particular development at the proposed location, in the context of the operator's overall plans to develop a network and the plans of other operators. To provide details of what other sites or locations were considered and include a map showing the location of all existing telecommunication structures, whether operated by the applicant or by a competing company, within 1km of the proposed site and reasons why these sites were not feasible.

PIO126 When antennae and their support structures are no longer being used and no new user has been identified to ensure that they are removed and that the site is reinstated at the operator's expense and to the Council's satisfaction. Permissions granted will contain a bonding arrangement to this effect. It shall also be an obligation of the original operator to inform the Council if they intend to dispose of the site to another suitable operator.

5.2. **Relevant Government Guidelines**

National Planning Framework – Project Ireland 2040

Telecommunications and Support Structures, Guidelines for Planning Authorities (1996).

Circular Letter PL 07/12 – Telecommunications Antennae and Support Structure Guidelines, Department of Environment, Community and Local Government (October 2012).

5.3. **Natural Heritage Designations**

- 5.3.1. The site is located c. 4.7km to the south-east of the Lough Oughter and associated Loughs SAC (Site Code: 000007) and Lough Oughter SPA (Site Code: 004049).

5.4. **EIA Screening**

- 5.4.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. A first-party appeal was received from Towercom Ltd. representing the applicant Eircom Limited, against the decision made by the Planning Authority to refuse permission for the proposed development. The main grounds of appeal are summarised under the headings below;

6.1.2. **Justification for new structure**

- Eir's 4G coverage is almost non-existent in Ballinagh. It's 3G coverage is better but not optimal.
- Eir wishes to rectify this position by installing a 15m high monopole within its exchange premises to the rear of the Garda station off Main St.

- Vodafone's 4G coverage in Ballinagh is deficient.
- Vodafone has provided written support for the proposed development and accompanied this with a technical justification underpinning its support.
- There are a number of existing telecommunications structures remote from Ballinagh which provide localised other operator coverage. This coverage does not adequately extend into Ballinagh town centre.
- Underpinning the proposed development is Eir's and Vodafone's need to significantly improve their respective 4G service provision in Ballinagh and surrounding areas.
- The existing timber pole on the site is too low, light and replete of fixing points to satisfy operators technological requirements.
- The proposed structure shall release both operators to substantially improve their respective 3G and 4G services for community benefit from within this area of poor coverage.
- The application site is an existing utilities site. While the proposed development will be the tallest structure on the site, it is still low by accepted industry standards.
- 15m is the is minimum acceptable structure height consistent with effective operation. In the absence of the proposed development, Eir's and Vodafone's coverage blackspots in Ballinagh will persist.

6.1.3. **Visual Impact**

- The site is not located within a High Landscape Area or Architectural Conservation Area and is not adjacent to any 'Major Lakes and Like Environs' or 'Area of Special Interest' under the Cavan County Development Plan.
- The proposed development is for a 15 high monopole telecommunications structure with associated equipment, all within an existing utilities compound.
- The subject compound contains a 10m high timber pole carrying telecommunications equipment.

- The proposed structure is taller than the existing infrastructure on site. This is needed to accommodate additional telecommunications equipment and meet the technical requirements of the operator.
- At 15m tall the proposed structure is generally on the lower end of telecommunications infrastructure.
- The design of the proposed structure complies with national and local policy.
- The proposed structure will be situated in an existing exchange compound already host to another telecommunications structure.
- The proposed structure has been designed to keep the height to the absolute minimum while being consistent with coverage and transmission requirements.
- The proposed structure is particularly well screened by trees and buildings and is set back some 50m from the public road.
- While there are residential buildings nearby, the impact of the proposed structure shall be limited on account of the extensive intervening tree screening coupled with the fact that the proposed structure shall be situated some 10m east of the existing timber pole structure and therefore further from the housing to the west of the application site.
- It is not uncommon to have telecommunications structures in towns and villages across Ireland.
- The site, while designated town centre, is set back from the main street and, if permitted, would not have an adverse effect on the streetscape.

6.1.4. Legal Interest

- Eir occupy and operate the exchange site and request that evidence of sufficient legal interest in the site be made a condition of a grant of permission, prior to any works commencing.

6.1.5. Existing Eir coverage across 3G & 4G technologies

- Comreg maps submitted showing Eir and Vodafone's current coverage. The proposed development would have the effect of extending 'very good coverage' levels within the Ballinagh area.

- The proposal would transform the availability of Eir and Vodafone's broadband availability and connectivity for the residents and businesses of Ballinagh.
- Vodafone currently transmit from the existing timber pole on the site. Its 4G coverage is poor in the town of Ballinagh.
- Vodafone's poor 4G coverage further emphasises the fact that timber pole infrastructure is not suitable for 3G and 4G technologies.
- Timber poles were suitable for older 2G technology. Modern technology demands higher levels of equipment together with increased weight bearing and wind loading considerations all of which is not consistent with timber pole infrastructure.

6.1.6. **Discounted Structures**

- Eir's improved coverage is best achieved from the subject site. Notwithstanding this, Eir has considered the upgrade of the most proximate telecommunications structures to establish if they would achieve its coverage goals.
- Map submitted showing all mobile telecommunications installations in the vicinity of Ballinagh. Details and unsuitability of each provided, as follows;
 1. Cahoo Townland: Eir, Vodafone and Three transmit from a site in Cahoo Townland, 2.2km from the appeal site. This site is too far from Ballinagh to improve Eir's 4G coverage and must be discounted on this basis.
 2. Eir Exchange (Appeal Site): Vodafone transmits from a 10m high timber communications pole at Eir's exchange in Ballinagh. In addition to being too light and low, the timber pole cannot be extended or strengthened. Additional equipment for newer technologies cannot be affixed and site sharing isn't possible.

6.1.7. **Compliance with Development Plan Policy / Guidelines**

- The proposed development would drive social and economic progress in Ballinagh through improved 4G connectivity while remaining sympathetic to residential amenities and the general landscape character.
- The proposed monopole structure is slim in profile and measures only 15m high.
- The proposal would not have a terminal, negative visual impact.

- The proposal is not dissimilar to common street lighting, flood light structures and other monopoles located in towns and villages nationwide.
- The proposed structure is accessed from a laneway off the main street and behind a Garda station.
- The proposal would not contravene the Cavan County Development Plan 2014-2020, in particular Objectives PIO118, PLO120, PIO122 and PIO125.
- Co-location of antennae is not possible on existing structures.
- Existing structures are either too distant or fail to deliver coverage into the target coverage by reason of topography, structure height and distance.
- The proposed monopole is slim in profile and measures only 15m high.
- The proposed structure is accessed from a public road and is set back from the main street.
- The structure is sited within an existing telecommunications compound.
- Within Ballinagh there are no mast clusters within the town.
- The only other telecommunications structure in the town centre is the wooden pole on the application site.
- Existing free-standing structures are either too remote or situated within a topography that limits coverage reach to deliver balanced 4G connectivity to Ballinagh town centre.
- A structure must be within close vicinity to its target coverage area. This will allow the site to provide high quality indoor coverage.
- Clustering on a site over 2km away will not provide the coverage required in the town centre.
- The proposed structure will share the site with the existing timber pole therefore fulfilling the requirement to cluster masts together, as set out in the Development Plan.
- The applicant has examined site sharing prospects on all structures within a 1km radius of the application site. There are currently no structures within 1km of the site.

6.1.8. **Compliance with relevant Government Policy / Guidelines**

- The proposal seeks to facilitate connectivity, broadband rollout and the strengthening of rural Ireland, in accordance with the National Planning Framework.
- The proposal complies with National, Regional and Local policy by providing high quality network coverage to a local community.
- Without the proposed development, the local community will continue to suffer without essential coverage.
- The proposal will facilitate remote working as well as provide coverage to local homes and businesses.
- Reference made to previous planning appeals whereby An Bord Pleanála overturned the Local Authorities decision to refuse a telecommunications proposal. Case references include ABP Ref.'s PL04.309019 and PL20.309385.

6.2. Planning Authority Response

The Planning Authority's response is as follows;

- The site is situated 50m to the west of Main Street and is zoned 'Town Core'.
- The site is bound to the east by a Garda Station, Seangharrai Drive housing development to the west and a row of townhouses and commercial properties to the south.
- Part of the zoning objective of the site is to ensure that any new development would have a minimal impact on the established residential amenity of the area. The proposed development would not achieve this.
- The proposed telecommunications structure would be 12m from the closest residential dwellings.
- The proposal has an overall height of 16.5m.
- The proposal would be a prominent feature on Main Street and would have a negative impact on the streetscape/ townscape at this location.
- No visual impact assessment was submitted with the application.

- The Commissioner of Public Works in Ireland objects to the proposed development and have not given consent for the subject application on their lands.
- The Planning Authority is not satisfied that the applicant has sufficient legal interest in the site to carry out the proposed development.
- The proposal would have the capacity to co-share with third party operators.
- Permission was refused for a 30m high telecommunication structure on the site in 1998.

6.3. Observations

None

7.0 Assessment

7.1. The main issues for consideration are the 3 no. reasons for refusal as cited by the Planning Authority. These are addressed under the following headings;

- Impact on Visual Amenity,
- Impact on Residential Amenity,
- Justification for the Proposed Development,
- Legal Interest,
- Appropriate Assessment.

These are addressed below.

7.2. Impact on Visual Amenity

7.2.1. The Planning Authority refused permission for the proposed telecommunications structure on the grounds that its scale and design would have an adverse impact on the visual and residential amenities of the area, would set an undesirable precedent for future development of this nature and would be contrary to Policy Objective PIO120 of the Cavan County Development Plan 2014 - 2020, which states that 'masts will only be permitted within towns and villages of the County, when accompanied by

satisfactory proposals for dealing with dis-amenities and incompatible locations'. The appellant contests this reason for refusal, as detailed in Section 6.1 above.

- 7.2.2. The site is zoned 'Town Core' in the Cavan County Development Plan 2014-2020. The zoning objective is 'to strengthen the vitality and viability of the town core by actively facilitating the reuse of existing buildings, as well as, brownfield and Greenfield sites. The emphasis will be on high quality urban design which does not detract from the existing urban framework'. The use class 'telecommunications structure' or similar is not listed under uses 'permitted in principle' or 'not permitted' under this zoning objective. The Development Plan states that non-listed uses that are proposed may be considered, if supported in the context of the proper planning and sustainable development of the area. Having regard to the planning history of the site, as detailed in Section 4.0 above, the Planning Authority has established precedent by previously granting permission for telecommunications structures at the subject site. Most recently, planning permission was granted in 2015 to Vodafone Ireland under P.A. Ref. 15/11 for the retention of an existing telecommunications support pole 10.5m high with antenna, equipment cabinet and associated equipment within the Eircom Exchange compound. On this basis, I am satisfied that the proposed development is acceptable in principle at this location.
- 7.2.3. With regards visual impact, Policy PIO121 of the Cavan County Development Plan requires that "masts will only be permitted if supported by an acceptable 'Visual and Environmental Impact Assessment Report'. A telecommunications structure is not a type of development listed in Schedule 5 Part 1 or Part 2 of the Planning and Development Regulations 2001 (as amended), which sets out types of development for which a mandatory or sub-threshold Environmental Impact Assessment Report is required. As such an Environmental Impact Assessment Report is not required for the proposed development. The Grounds of Appeal Report submit provides a visual impact assessment of the proposed development, as summarised in Section 6.1.3 above. I am satisfied this adequately addresses the visual impact of the proposal in accordance with the requirements of Policy PIO121 of the Development Plan.
- 7.2.4. The site itself comprises an existing Eircom exchange compound, located c. 45m to the north-west of Main Street in Ballinagh. The site is located to the rear of a single storey detached Garda station and is visible from the laneway entrance along Main Street. Some semi-mature trees and hedging are planted along the south-western

(side) and north-western (rear) boundaries which screen the compound building when viewed from the south-west and north-west. The proposed monopole will be located c. 2m to the front (south-east) of the existing exchange building and will have a height of 15m with a lighting finial rising 1.5m on top, providing an overall height of 16.5m. The existing 10m high wooden pole (13m in total height including the antenna on top) will remain in situ at the north-western corner of the site.

7.2.5. The site is not located within any designated area such as a 'High Landscape Area', 'Major Lakes and Lake Environs' or 'Area of Special Landscape Interest', as detailed in Appendix 4 Map 8 of the Cavan County Development Plan. There are no designated scenic views of the site. The site is not located within an Architectural Conservation Area. While not recorded as Protected Structures in the current Cavan County Development Plan 2014-2020, I note that Ballinagh Mission Hall to the north of the Garda Station is recorded on the National Inventory of Architectural Heritage as a building of architectural and social importance with a regional rating (Reg. No. 40306005) and the pair of two storey dwellings to the south of the Garda Station are recorded as buildings of architectural importance with a regional rating (Reg. No. 40306007).

7.2.6. Section 4.3 of the Telecommunications Antennae and Support Structures Guidelines (1996) sets out guidance with regards visual impact and requires that;

'only as a last resort should free-standing masts be located within or in the immediate surrounds of smaller towns or villages. If such 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'.

7.2.7. Having regard to the context of the site within an existing Eircom exchange compound, the existing 13m high telecommunication structure on the site, the backland location of the site c. 45m to the north-west of Main Street and the intervening buildings along Main Street and Seangharrai Drive, it is my view that the proposed 15m high telecommunication structure (16.5m in total including the light finial) would not have a significant negative impact on the character and visual amenity of the surrounding streetscapes. While the proposal would be more visible than the existing 13m high telecommunication structure by reason of its height and location to the front (south-

east) of the exchange building, it is my view that the intervening buildings on approach along Main Street would screen the visual impact of the proposal along the streetscape. Existing trees and tall hedgerow along the north-western and south-western boundaries of the site provide screening of the site when viewed from the north-west and south-west and the dwellings along Seangharrai Drive would screen the proposal to a large extent when viewed from the north.

- 7.2.8. Longer range views of the site are intermittent and not terminating from any angle, which is achieved by intervening buildings, the site's backland position 45m to the north-west of Main Street, mature trees and hedgerow along the north-western and south-western boundaries. It is my view that the monopole design of the structure is an acceptable design type in a town location and would not significantly detract from the character or visual amenity of the surrounding streetscapes to such an extent to warrant refusal of permission. However, given the visibility of the proposed development and existing Eircom exchange compound as viewed from the laneway entrance along Main Street and the dwelling on adjoining lands to the north, I consider it appropriate that in the event of a grant of permission a condition should be imposed requiring the applicant to submit a landscape plan for the boundaries of the site incorporating shrub and hedgerow planting, to reduce the visual impact of the proposed development and existing exchange compound when viewed from these locations. Given the location of the proposed development and the existing exchange compound and telecommunication structure on the site, it is my view that the proposed development would not adversely impact on the architectural setting of the adjacent Ballinagh Mission Hall to the north of the Garda Station and the pair of two storey dwellings to the south of the Garda Station, as recorded on the National Inventory of Architectural Heritage. It is my view that the proposed development would not set an undesirable precedent for future development of this nature, as put forward by the Planning Authority. On this basis, I recommend that the appeal should succeed in relation to the Planning Authority's first reason for refusal with regards impact on visual amenity and undesirable precedent.

7.3. Impact on Residential Amenity and Public Health

- 7.3.1. The Planning Authority refused permission for the proposed development on the grounds that its scale and design would have an adverse impact on the residential

amenities of the area. The nearest residential dwelling is located c. 5.8m to the north of the site and a pair of semi-detached dwellings along Seangharrai Drive are located c. 11m to the north-west of the site. There are also dwelling located to the south of the Garda Station. Having regard to the proximity of the proposal to these dwellings and the issue of public health, I refer the Board to Circular Letter PL 07/12, issued by the Dept. of Environment, Community and Local Government on the 19th Oct. 2012 re. the Telecommunications Antennae and Support Structures Guidelines which states that;

‘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’.

7.3.2. Having regard to the above, I consider the proximity of the proposed development to adjacent residential dwellings and its possible impact on public health is not a planning issue. I am satisfied that the operator’s compliance with general public exposure limits will be covered by the terms of the operator’s licence.

7.3.3. With regards noise, I do not consider the proposed development would generate any undue noise during its operational phase. As such, given the nature of the proposed development and its requirement to comply with other regulatory codes, it is my view that the proposed development would not adversely impact on the residential amenity of adjacent residential dwellings.

7.4. Justification for the proposed development

7.4.1. The Planning Authority refused permission for the proposed development on the grounds that it would be contrary to objectives PIO118, PIO122 and PIO125 of the Cavan County Development Plan 2014 - 2020, in relation to reasoned justification for the proposed development. The appellant contests this reason for refusal as detailed in Section 6.1 above.

7.4.2. The applicant has submitted with the grounds of appeal a report setting out a detailed rationale for the proposed development at the subject site. This is detailed in Section 6.1 above and summarised as follows;

- Eir's 4G coverage is almost non-existent in Ballinagh and its 3G coverage is sub-optimal. The proposed development would rectify this.
- Vodafone's 4G coverage in Ballinagh is deficient.
- The proposed development would enable Eir and Vodafone to significantly improve their respective 3G and 4G service provision in Ballinagh and the surrounding areas from the application site.
- Existing telecommunications structures remote from Ballinagh do not provide coverage of Ballinagh town centre.
- The existing timber pole on the site is too low, light and replete of fixing points to satisfy operators technological requirements.
- The site is an existing utilities site and the proposed telecommunications structure is low by accepted industry standards.
- A height of 15m is the minimum acceptable structure height required to provide effective operation.
- In the absence of the proposed development, Eir's and Vodafone's coverage blackspots in Ballinagh will persist.

7.4.3. Further to the above, the applicant has submitted a map submitted showing the location of all mobile telecommunications installations in the vicinity of Ballinagh and details of the unsuitability of each, as detailed in Section 6.1.6 above.

7.4.4. Having regard to the above, I consider the applicant has submitted a reasoned justification for the proposed development in compliance with the requirements of Policy PIO125 of the Development Plan.

7.4.5. The co-location of antennae on the proposed structure and non-availability of other suitable structures within 1km of the site would be in accordance with Policy PIO118 of the Cavan Development Plan which seeks 'to encourage the co-location of antennae on existing support structures and to require documentary evidence, as to the non-availability of this option, in proposals for new structures' and and Section 4.5 of the Guidelines on Telecommunications Antennae and Support Structures in relation to sharing facilities.

7.4.6. Having regard to the above, I consider the applicant's justification for the proposed telecommunication structure is acceptable and in accordance with National Policy Objective 24 of the National Planning Framework - Project Ireland 2040 which seeks to 'support and facilitate delivery of the National Broadband Plan as a means of developing further opportunities for enterprise, employment, education, innovation and skills development for those who live and work in rural areas'. Ballinagh town is designated a Tier Four Small Town in the Cavan County Development Plan 2014-2020 with a population under 1,000 in the 2016 Census, as per the current Development Plan. Such enhancement of mobile and broadband telecommunications would promote economic development, improve personal security, enhance social inclusion and provide considerable advantage to home and business users in Ballinagh town and surrounding area. On this basis, I recommend that the appeal should succeed in relation to the Planning Authority's second reason for refusal.

7.4.7. Legal Interest

7.4.8. The Planning Authority refused permission for the proposed development on the grounds that that the applicant has not demonstrated sufficient legal interest in the lands to carry out the proposed development and therefore the Planning Authority is precluded from granting permission for the proposed development.

A submission to the Planning Authority on the 4th May 2021 informs that the Commissioners of Public Works in Ireland (CPW) are the registered owners of the appeal site and that consent has neither been sought by the applicants for the proposal nor given by the CPW for the proposal. Land Registry Folio / details provided by the CPW confirming same.

In consideration of this issue, Section 5.13 of the Development Management Guidelines (2007) refers to 'Issues relating to title to land' and states that the planning system is not designed as a mechanism for resolving disputes about title to or rights over land and that these are ultimately matters for resolution in the Courts. The Guidelines advise that where there is doubt in relation to the legal title of the applicant, the Planning Authority may decide to grant permission, however a grant of permission is the subject of Section 34(13) of the Planning and Development Act 2000 (as amended). Section 34(13) of the Planning and Development Act states that 'a person is not entitled solely by reason of permission to carry out any development'.

Having regard to the above, I consider it inappropriate to refuse permission for the proposed development on these grounds.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that permission be granted subject to conditions, for the reasons and considerations below.

9.0 Reasons and Considerations

Having regard to the provisions of the National Planning Framework, the Cavan County Development Plan 2014-2020, the Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996) and associated Circular Letter PL07/12, the existing pattern of development in the area, and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Details of the proposed colour scheme for the telecommunications structure and ancillary structures shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.</p> <p>Reason: In the interest of the visual amenities of the area.</p>
5.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
6.	<p>When no longer required, the monopole and associated equipment shall be permanently removed from the site.</p>

	Reason: In the interest of visual amenity.
7.	<p>The developer shall allow, subject to reasonable terms, other licensed mobile telecommunication operators to co-locate their antennae on the proposed mast.</p> <p>Reason: In order to avoid the proliferation of telecommunication structures in the interest of visual amenity.</p>
8.	<p>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.</p> <p>Reason: In the interest of public safety.</p>
9.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of traffic management during the construction phase, details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste, as well as means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water drains.</p> <p>Reason: In the interests of public safety and amenity.</p>
10.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of the reinstatement, including all necessary demolition and removal.</p>

	<p>The form and amount of the security shall be agreed between the planning authority and the developer, or in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory reinstatement of the site.</p>
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Brendan Coyne
Planning Inspector

18th November 2021