



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311332-21

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<b>Development</b>	Erection of a 21m monopole telecommunications support structure
<b>Location</b>	Eir Exchange Park, Ballacolla, Portlaoise Co. Laois
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	20477
<b>Applicants</b>	Eircom Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First Party
<b>Appellants</b>	Eircom Ltd
<b>Date of Site Inspection</b>	1 <sup>st</sup> February 2022
<b>Inspector</b>	Dolores McCague

## 1.0 Site Location and Description

- 1.1. The site is located at Eir Exchange, Park, Ballacolla, Portlaoise, Co Laois. Ballacolla is a small settlement with short streets extending from a crossroads just north east of the site.
  - 1.1.1. There is an existing telecommunications building on the site: small, flat-roofed typical of such buildings: a small container, a 10m high timber pole and antennae, and an overhead ESB line. Mature vegetation surrounds the site. There is a mix of commercial and residential properties on the opposite side of the road and to the north-east, and a field to the south-west.
  - 1.1.2. The site access crosses the public footpath.
  - 1.1.3. The site is given as 0.006ha.

## 2.0 Proposed Development

- 2.1.1. The proposed development is the erection of a 21m monopole telecommunications support structure (overall height 22.51m) together with antennae, dishes and associated telecommunications equipment.
- 2.1.2. In their response to the request for clarification of further information the applicant stated, in appendix 1, that the rationale for the proposed development is to improve the coverage and capacity of mobile telecommunications and broadband services in the Ballacolla area, consistent with the Laois County Development Plan 2017-2023. The proposed monopole support structure would make this site available to other telecommunications and broadband operators in line with local and national policy.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 9 conditions, including condition nos. 1 & 9 as follows (note that condition 7 & 8 are duplicates):
  - 1 a) The development shall be carried out in accordance with the plans and particulars received by the planning authority on 21/09/2020 as amended by revised

plans and particulars submitted on the 22/04/2021 and 19/07/2021 except where conditions hereunder specify otherwise.

b) The maximum height of the structure shall not exceed 18 metres. Revised plans in this regard shall be submitted for the written agreement of the planning authority prior to commencement of development.

**Reason:** In the interest of the proper planning and sustainable development of the area and visual and residential amenity.

9) Prior to the commencement of development, a contribution shall be payable to Laois County Council, in accordance with the Council's Development Contribution Scheme 2017-2023, in respect of public infrastructure and facilities benefiting development in the area of the planning authority, and that is provided or that is intended to be provided by, or on behalf of, the Council.

The contribution payable will be based on the contribution rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and penalty interest for late payment, in accordance with the terms of the Council's Development Contribution Scheme

Development not in any of the above classes

Industrial Development	€40 per sq m	Area	Total per Contribution
Total Development Contributions	€40	16	€640

**Reason:** It is considered appropriate that the developer should contribute towards the expenditure incurred or proposed to be incurred by Laois County Council in respect of the provision/improvement of public services/infrastructure benefiting development, in the area of the planning authority.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

3.2.2. The first planning report, 30/10/20, recommending further information includes:

Further information:

1a) submit detailed technical justification for the proposed development having regard to existing and approved telecommunications facilities in the general area and which have not been referenced in the cover report.

For example the planning authority has recently approved two similar (and much taller) facilities on sites within close proximity of the proposed development site under planning references 19/618 (north-west) and 17/597 (south-west).

Can these sites not cover the area to be served by the proposed development. Submit relevant details including amended service coverage maps to include reference to both of these sites.

b) with reference to a 'discounted site at Dairyhill' c2.9km north-west, will this facility be removed in the event of the proposed development being approved?

2 regarding proposals in relation to the existing 10m pole; the cover letter states proposal as a replacement structure, the drawings show the proposed development to include the 10m pole – clarify.

3 landscape and visual assessment.

4 re. health.

5 restoration plan.

3.2.3. A request for further information issued 30/10/2020 and a response was received 22/04/2021.

3.2.4. The second planning report, 13/05/21, recommending clarification of further information includes:

- 1 landscape and visual assessment – submitted response unacceptable.
- 2 Re. health - statement of compliance with International Radiation Protection Association, and evidence that an installation of the type applied for complies with guidelines.

Item 1 remains unanswered.

- 3.2.5. A request for clarification of further information issued 17/05/2021 and a response was received 19/07/2021.
- 3.2.6. The third planning report, 9/08/21, recommending permission includes – responses satisfactory.
- 3.2.7. Other Technical Reports
- Area Engineer – 16/10/20 – no objection, refer to Road Design.
- Road Design - 19/10/20 – no objection.

## 4.0 Planning History

None stated.

## 5.0 Policy Context

### 5.1. Laois County Council Development 2017-2023.

- 5.1.1. This is the operative plan for the area. Relevant provisions include:

Aim 12 Support the development of key infrastructure such as telecommunications, electricity, gas to enable economic development.

6.6.5 Telecommunications - the development of high-quality telecommunications infrastructure is critical to advance the economic and social development of the county. The development of telecommunications infrastructure is essential to attracting investment and facilitating economic development. The Council is committed to enhancing the telecommunications network and infrastructure throughout the county. However, this must be managed to ensure a balance between the provision of telecommunications infrastructure in the interests of social and economic progress, and sustaining residential amenity and environmental quality.

6.6.5.1 Broadband - the availability of a high-quality and high speed broadband network will, increase economic development potential by facilitating a transition to a knowledge-based 'smart economy', it promotes sustainable development by encouraging remote working and reducing commuting and it can promote social inclusion and an enhanced quality of life for all. National Broadband Scheme

Government policy is focused on ensuring that everyone, irrespective of where they live, should have access to high quality, competitively priced broadband services. The rollout of the National Broadband Scheme is focused on delivering basic, affordable broadband to target areas across the country in which services were deemed to be insufficient. The following map illustrates the areas in Laois which were covered by the scheme.

Rural Broadband Scheme - the Rural Broadband Scheme has been established to enable a basic broadband service to be provided to individual rural premises which are not capable of obtaining a broadband service from existing internet service providers. The scheme included extensive parts of the county.

6.6.5.2 Telecommunications Masts and Antennae - an efficient telecommunications system is important in the development of the economy of which the provision of masts and associated antennae are an essential element. The Council will have regard to the document titled Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (DoELG, 1996) when considering applications for masts and antennae. The location of masts can be a contentious issue and one which will be carefully considered by the Planning Authority. In general: it shall be the preferred approach that all new support structures meet fully the co-location or clustering policy of the guidelines and that shared use of existing structures will be required where there are a number of masts located in any single area.

It is the policy of the Council to:

- facilitate the delivery of high-capacity telecommunications infrastructure at appropriate locations throughout the county having regard to the guidelines for “Telecommunications Antennae and Support Structures” and any updated documents issued by the DoECLG or relevant authority (TELE5);
- co-operate with telecommunications service providers in the development of infrastructure, having regard to the proper planning and sustainable development of the area, normal planning and environmental criteria and the development management standards (TELE7);
- developers may be required to provide telecommunications structures with environmentally acceptable designs, including camouflaging/disguising techniques to integrate the structure into the surrounding landscape (TELE8);

- adopt a presumption against the location of structures in vulnerable landscapes as identified in the Landscape Character Assessment (Appendix 6) and in areas where views are to be preserved and in areas adjacent to national monuments, sites of archaeological heritage or protected structures (TELE 9);
- existing Public Rights of Way will be identified prior to any new telecommunication developments (including associated processes) which will be prohibited if they impinge thereon or on recreational amenities, public access to the countryside, communities or the natural and built environment (TELE10);
- promote and facilitate the sharing of facilities (TELE 11). Co-location and clustering of new masts and support structures on existing sites will normally be required, unless a fully documented case is submitted explaining the precise circumstances which mitigate against co-location and clustering. Where it is not possible to share a support structure, the applicant should, where possible, share the site or an adjacent site so that the antennae may be clustered. In sensitive landscape areas the presumption will be that applications must meet the co-location requirements. Where it has been proven that there is a need for new / expanded coverage in a particular area, the applicant shall show that all existing masts and support structures have been examined to determine if the attachment of new antennae to existing structures can provide the coverage required, the applicant shall submit either a Discovery Series Map or similar map type (to be agreed with planning authority) to the scale of 1:50,000 the location of all telecommunication structures within a radius of 1km of the proposed site, indicating the coverage area of the proposed facility and a technical evaluation of the capabilities of these masts to take additional antennae and provide the coverage required.
- applicants shall indicate whether or not they are willing to share the proposed masts with other telecommunication operators. Comply with the Code of Practice of Sharing Radio Sites issued by the Commission for Communication Regulation; Demonstrate compliance with the requirements of the DOECLG Guidelines on “Telecommunications Antennae and Support Structures (1996) “and the Circular Letter of 2012(PL07/12) (as may be amended) and other publications and material as may be relevant (TELE 12);

Development Management Standards in relation to telecommunications are set out in DM67 and include: justification of need, evidence of consultations, if any, with other operators with regard to the sharing of sites and/or support structures, and a requirement for a statement of compliance with the International Radiation Protection Association (IRPA) Guidelines.

Volume 2 of the plan includes a settlement plan for Ballacolla. The site is within the Village Centre zone. The purpose of this zoning is to enhance the vitality and viability of town and village centres through the development of under-utilised land and brownfield sites and by encouraging a mix of uses to make the town and village centres an attractive place to visit, shop and live in. The character of the town and village centres shall be protected and enhanced. The plan includes significant areas for development including industrial and warehousing.

‘Telecommunications support structures’ are not listed in land use matrix. ‘Utility structures’ are listed as permissible within this zone.

## **5.2. Laois County Council Development Contribution Scheme 2017-2023**

Section 12. - The section ‘exemptions’ includes:

12.9. Telecommunications Development consisting of masts and antennae, dish and other apparatus/equipment for communication purposes which form part of the National Broadband Scheme (NBS) or a subsequent Government endorsed initiative as defined by the Department of Communication, Energy and Natural Resources (DCENR]. Where a general development contribution has been paid for telecommunications apparatus on foot of a 5 year permission (as recommended by the DoEHLG Guidelines on Telecommunications 1996), contributions will not be payable on any subsequent applications for the same structure, unless the existing structure is to be materially altered.

Section 16. - Development Contributions Scheme 2017-2023 - sets out the rates of contribution payable as:

Development not in any of the above classes €40 per sq. m.

### 5.3. **Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996)**

5.3.1. These guidelines generally advocate improvements in the country's telecommunications infrastructure and set out the criteria for the assessment of telecommunications structures, including:

- 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 (Section 4.3).
- Facilities and Clustering (Section 4.5): sharing of installations (antennae support structures) will normally reduce the visual impact on the landscape. The potential for concluding sharing agreements is greatest in the case of new structures when foreseeable technical requirements can be included at the design stage. All applicants will be encouraged to share and will have to satisfy the authority that they have made a reasonable effort to share.

### 5.4. **Circular Letter PL07/12**

5.4.1. This Circular Letter revises elements of the 1996 Guidelines. In particular, Section 2.2 advises Planning Authorities to cease attaching time limiting conditions to telecommunications masts, except in exceptional circumstances. Section 2.4 advises that the lodgement of a bond or cash deposit is no longer appropriate and instead advises that a condition be included stating that when the structure is no longer required it should be demolished, removed and the site re-instated at the operators' expense.

### 5.5. **Development Contributions Guidelines for Planning Authorities (2013)**

5.5.1. These guidelines require planning authorities, in reviewing their development contributions schemes, to include waivers for broadband infrastructure (masts and antennae). The Guidelines further state that the practice of 'double charging' is inconsistent with both the primary objective of levying development contributions and

with the spirit of capturing ‘planning gain’ in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

## 5.6. **Circular PL03/2018**

Revision of Development Contribution Guidelines in respect of Telecommunications Infrastructure (3<sup>rd</sup> July 2018). Reference to previous Circulars and specifically to the requirement for L.A.s to include waivers and reductions in their Development Contribution Schemes, including the application of a specific waiver for broadband infrastructure (masts and antennae). While this waiver was primarily aimed at facilitating the roll-out of broadband infrastructure, most local authorities had extended it to include mobile phone infrastructure for the purpose of improving mobile phone coverage in their areas. The Circular requires those local authorities who have not yet done so, to ensure that their Development Contribution Schemes are updated to include such waivers in respect of both mobile phone and broadband infrastructure.

This waiver shall apply to any telecommunications infrastructure, both mobile and broadband, being deployed as part of a Government endorsed telecommunications strategy, plan or initiative. Where mobile or broadband operators demonstrate to the satisfaction of the planning authority that their infrastructure provides services to customers who would not otherwise be able to avail of an adequate mobile or broadband service, such infrastructure shall not attract development contributions. Furthermore, the waiver applies to masts, antennae, dishes and other apparatus or equipment being installed for such communication purposes.

To ensure that a consistent approach is applied by all local authorities in this regard, action 3 of the Report of the Mobile Phone and Broadband Task Force – jointly chaired by the Minister for Communications, Climate Action and the Environment and the Minister for Regional and Community Development – recommended that the 2013 guidelines be now revised to ensure that such waivers are applied in Development Contribution Schemes in respect of both mobile phone and broadband infrastructure. In light of this, those local authorities who have not yet done so were

asked to ensure that their Development Contribution Schemes are updated accordingly as soon as possible.

## **5.7. Natural Heritage Designations**

5.7.1. The nearest protected site is the River Barrow and River Nore SAC (site code 002162) located c1.8km to the south.

## **5.8. EIA Screening**

5.8.1. Having regard to nature and scale of the development and the location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can therefore be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. The appeal against condition nos. 1 & 9 of the decision, has been made by Towercom. It includes:

- They act as agents for Eircom Ltd.
- A reduced height of 18m is not consistent with significant coverage improvement. A height of 21m is required in order to allow operators to effectively function. It has been concluded by a landscape and visual impact assessment that the structure of 21m will not overly intrude on the visual amenities of the surrounding landscape, and that the impact of the proposed structure will have on the visual amenities of the area would be acceptable. Reducing the height by 3m will not make a significant difference in terms of visual impact however it will make a significant difference to coverage area and quality of service. The 21m height is the minimum consistent with effective operation which will improve 3G and 4G coverage. It is in line with the Telecommunications Antennae and Support Structures Guidelines for

Planning Authorities, 4.3 re support structures, 'the structure 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'. The height is needed to clear the surrounding trees and buildings.

- Precedent – 20/433 – 25.5m replacement lattice.
- Laois Co Co demonstrated an inconsistent approach in applying financial contributions on similar planning applications. In similar grants of permission no financial contribution was attached.
- Relevant sections of Laois County Council Development Contribution Scheme 2017-2023 have been ignored and as a result Circular PL03/2018 has failed to be implemented. Precedent: 19/413 – no contribution; 19/618 – no contribution; 20/121 – no contribution. The County Council Development Contribution Scheme 2017-2023 is cited, and has not been complied with. Circular PL03/2018 is cited, and has not been complied with. ABP 308859 is cited.
- The existing 10m pole will remain in place unless Vodafone make a decision to relocate their existing equipment onto the proposed structure.

## **6.2. Planning Authority Response**

6.2.1. The planning authority have not responded to the grounds of appeal.

## **7.0 Assessment**

7.1.1. I consider that the main issues which arise in relation to this appeal are as follows: appropriate assessment, condition no 1, condition no. 9 and other issues, and the following assessment is dealt with under those headings.

### **7.2. Appropriate Assessment**

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

### 7.3. Condition no. 1

7.3.1. Condition no 1 is in two parts. The first part is a standard condition requiring compliance with the plans and particulars submitted subject to conditions. The second part is the subject of the appeal. It states:

b) The maximum height of the structure shall not exceed 18 metres. Revised plans in this regard shall be submitted for the written agreement of the planning authority prior to commencement of development.

**Reason:** In the interest of the proper planning and sustainable development of the area and visual and residential amenity.

7.3.2. It is stated in the grounds of appeal that a reduced height of 18m is not consistent with significant coverage improvement that a height of 21m is required in order to allow operators to effectively function and that the height is needed to clear the surrounding trees and buildings.

7.3.3. It is stated that reducing the height by 3m would make a significant difference to coverage area and quality of service, that the 21m height is the minimum consistent with effective operation which will improve 3G and 4G coverage.

7.3.4. The planning authority was satisfied to permit the proposed monopole structure. The application of a height limitation was not considered in the context of the operational requirements, as there is no information on the file regarding the specific height required. Neither the request for further information, nor the request for clarification of further information addressed the matter of height.

7.3.5. In my opinion the request to omit condition 1 b is reasonable and part b of condition no. 1 should be omitted.

### 7.4. Condition no. 9

7.4.1. Condition no 9 requires the payment of €640, in accordance with the Council's Development Contribution Scheme 2017-2023, in respect of public infrastructure and facilities.

7.4.2. The payment is based on section 16 of the Laois County Council Development Contribution Scheme 2017-2023. Section 12 'exemptions' provides that where a general development contribution has been paid for telecommunications apparatus

on foot of a 5 year permission (as recommended by the DoEHLG Guidelines on Telecommunications 1996), contributions will not be payable on any subsequent applications for the same structure, unless the existing structure is to be materially altered.

- 7.4.3. The development contribution scheme adopted in 2017 has not been amended to reflect the terms and conditions of Circular PL03/2018, issued in July 2018.
- 7.4.4. The main purpose of PL03/2018 was to extend the waivers required by Circular 07/12 in relation to broadband infrastructure to include mobile phone infrastructure and services. Specifically, it was stated that the waiver shall apply to any telecommunications infrastructure, both mobile and broadband, being deployed as part of a Government endorsed telecommunications strategy, plan or initiative. Where a developer can demonstrate that their infrastructure provides services to customers who would not otherwise be able to avail of an adequate mobile or broadband service, it was stipulated that such infrastructure should not attract development contributions.
- 7.4.5. I am satisfied that the infrastructure that is to be provided would satisfy these requirements and can be considered to be in accordance with the Government endorsed initiative, the National Broadband Plan and therefore should not attract a development contribution charge.

## **7.5. Other Issues**

- 7.5.1. Use as a multi-operator support structure - it is stated in the response to the request for clarification of further information that the proposed monopole support structure would make this site available to other telecommunications and broadband operators in line with local and national policy, and that the proposed development will enhance and improve telecommunications and broadband services in the region in accordance with local and national policies. An additional condition clarifying the foregoing should be attached to any permission.
- 7.5.2. While it may be appropriate for the planning authority to be notified of additions to antennae, it is considered that condition no 5 of the decision, which requires additional antennae to be subject to a further grant of planning permission would run counter to the objective, set out at national and local level to support the development of key telecommunications infrastructure.

- 7.5.3. Condition no. 3 of the decision refers to compliance with the International Commission on Non-Ionising Radiation Protection Guidelines. I consider attachment of such a condition reasonable.

## **8.0 Recommendation**

- 8.1.1. In accordance with the foregoing I recommend that permission should be granted, in accordance with the following conditions and for the following reasons and considerations.

## **9.0 Reasons and Considerations**

Having regard to the Laois County Development Plan 2017 – 2023 which supports the provision of telecommunications infrastructure and includes a plan for substantial development in the settlement of Ballacolla; it is considered that subject to the following conditions the proposed development would not be unduly visually obtrusive or seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

Having regard to Circular Letter 07/12 issued from the Department of the Environment, Community and Local Government and Circular PL03/2018 issued by the Department of Housing, Planning and Local Government under Section 28 of the Planning and Development Act 2000 (as amended), which requires that planning authorities revise their development contribution schemes in order that a waiver be provided for broadband and mobile phone infrastructure (masts and antennae) being deployed as part of a Government endorsed telecommunications strategy, plan or initiative, from the requirement to pay development contributions; and the information submitted in support of this application and appeal, it is considered that the proposed development constitutes infrastructure and equipment for communication purposes that form part of a government endorsed telecommunications strategy for the roll out of broadband and mobile services, and that the payment of the contribution should therefore not be required.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 22<sup>nd</sup> day of April 2021, and the 19<sup>th</sup> day of July 2021 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The developer shall allow, subject to reasonable terms, other licensed mobile telecommunications operators to co-locate their antennae onto the subject structure.</p> <p><b>Reason:</b> In order to avoid the proliferation of telecommunications structures in the interests of visual amenity.</p>
3.	<p>Any change in the ownership of the site or of the operator of the structure or of the use of the structure by any additional service providers shall be notified to the planning authority.</p> <p><b>Reason:</b> In the interests of clarity.</p>
4.	<p>The facility shall be operated and maintained to ensure that any emissions from the development remain within Guidelines set by the International Commission on Non-Ionising Radiation Protection.</p>

	<p><b>Reason:</b> In the interests of public health.</p>
5.	<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 intended construction practice for the development. The following shall be included as a minimum:</p> <p>The construction site shall be securely fenced along its perimeter and all construction activities shall take place within the site.</p> <p>All necessary measures shall be taken by the developer to prevent the spillage or deposit of clay, rubble or other debris on the public road network during the course of construction.</p> <p>Any damage to the public road as a result of the works shall be the liability of the developer.</p> <p><b>Reason:</b> In the interests of public safety and amenity.</p>
6.	<p>Except where their removal is necessitated by the proposed development, existing mature trees on the site shall be protected during construction. Further landscaping shall be carried out in consultation with the planning authority.</p> <p><b>Reason:</b> In the interests of visual amenity.</p>
7.	<p>Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p>

	<b>Reason:</b> In the interest of orderly development.
8.	<p>When the structure is no longer required, it shall be demolished and removed and the site re-instated at the operators' expense.</p> <p>Details relating to the removal and reinstatement shall be submitted to and agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interests of visual amenity.</p>

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Planning Inspector

14<sup>th</sup> March 2022

## Appendices

Appendix 1 Photographs

Appendix 2 Laois County Council Development 2017-2023.

Appendix 3 Laois County Council Development Contribution Scheme 2017-2023