



An
Bord
Pleanála

Inspector's Report ABP-311478-21

Development	To install a 15m high monopole carrying antennas, a dish, associated equipment, ground based equipment cabinets and all associated site development works.
Location	Eir Exchange, Anthony's Road, Kilworth, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	20/6908
Applicant(s)	Eircom Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Eircom Ltd.
Observer(s)	Sam Walsh.
Date of Site Inspection	26/01/2022.
Inspector	Auriol Considine

1.0 Site Location and Description

- 1.1. The proposed development site is located on the northern area of Kilworth, in Co. Cork. The site lies to the rear (east) of the existing telecommunications compound on Anthony's Road. The wider site is currently occupied by the existing Eir Exchange building which is located to the centre of the site. There is an existing single storey building located on the roadside with the access to the existing exchange building located to the south of the roadside building. The access is approximately 3m in width and the site is located within the 50km/ph speed limit.
- 1.2. The site lies within a generally low-density residential area and the proposed equipment is to be installed to the rear (east) of the existing exchange building. The site has a stated area of 0.0039ha and is well screened by hedges and trees, as well as the existing buildings on the site.

2.0 Proposed Development

- 2.1. Permission is sought to install a 15 metres monopole carrying antennas, a dish, associated equipment, together with ground-based equipment cabinets and all associated site development works. The development will provide for wireless data and broadband services, all at the Eir Exchange, Anthony's Road, Kilworth, Co. Cork.
- 2.2. The application includes the relevant plans and particulars, as well as a planning statement setting out the justification for the structure, a construction management plan for the scheme and a Radio Emissions Statement. The proposed development will include the 15m high support structure to hold 3 no. 2m long antennas, 3 no. remote radio units and a 600mm dish. The development will make provision for a second operator to co-locate on the pole as required by the 1996 guidelines.
- 2.3. Following the submission of the response to the further information request, the applicant submitted that the clarified that co-location is first choice, and this is evidenced by the fact that within 5km of the site, Eir already co-locates on 2 of the 4 existing Telecommunications sites. The other two sites were considered but discounted due to location or height. It is submitted that the proposed infrastructure

is required in order to provide the required wireless broadband and data objectives in the area.

2.4. In addition to the above, a landscaping proposal was included and a new proposal for vehicular access is proposed through the adjoining third party property to the south. The issue of the legal title was also addressed by the Eircom Limited solicitor and a new soakaway is to be constructed to the front of the exchange in the tarmac area.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the proposed development for the following reason:

The proposal is for the installation of a 15 metre monopole carrying antennas, a dish, associated equipment, together with ground-based equipment cabinets and all associated site development works within the settlement boundary of Kilworth. Based on the details submitted, the entrance to the public road is unsatisfactory by virtue of limited capacity and the inadequacy of the splays at the entrance to accommodate the vehicular traffic associated with the works proposed. It is therefore considered that the entrance arrangement proposed to serve traffic associated with the proposed development would endanger public safety by reason of being a traffic hazard.

3.2. Planning Authority Reports

3.2.1. Initial Planning Report:

- The initial planning Report considered the principle of the development to comply with the CDP requirements given the existing use of the site.
- Concern regarding the location of the site in terms of the requirements of the Guidelines in relation to the immediate surrounds of smaller towns and villages.

- Issues of visual impact and overbearing noted.
- The Planning Officer accepted the technical justification for the mast at this site but noted that no other sites were examined by the applicant.
- The initial report also notes the concerns raised by the Area Engineer in terms of the roads and traffic issues arising at the site and notes the third-party submission which questions the ability of the applicant to provide the necessary upgrades to access the site.

The report required the submission of further information in relation to 6 issues.

3.2.2. THE SP endorsed the Area Planners report, recommending that FI be sought.

3.2.3. Following the submission of the response to FI, the final planning officers report notes the clarification in relation to site selection and landscaping. The report, however, concludes that due to the roads and traffic hazard issues, together with the time constraints in seeking clarification of further information, there is no alternative but to refuse permission on the grounds of traffic safety. The Senior Planner endorses this recommendation to refuse permission.

3.3. Other Technical Reports

Area Engineer: The report notes that further information is required as there is a substandard entrance in place and that the Construction Management Plan appears to be unworkable with further information needed in terms of drawings showing how access and parking arrangements will work on site. Achievable sight distances are also required to be provided. The report also requires that proposals to deal with surface water runoff are submitted.

Following the submission of the response to the FI request, the AE indicates that the applicant has not addressed the concerns raised satisfactorily. The proposal to use a restricted residential access is questioned and if there is no issue to the title of the overall site, it is submitted that the applicant appears to be in a position to submit a proposal to improve the existing entrance and demolish the existing roadside structure which is restricting access and sightlines.

Clarification is required on this issue and all other FI matters have been addressed satisfactorily.

A third report is noted on the planning file which notes that there are time constraints, and that clarification cannot be sought. Refusal of permission is therefore recommended for 2 reasons.

3.4. **Prescribed Bodies**

IAA: No observations.

3.5. **Third Party Observations**

3.5.1. One third party objection to the proposed development is noted on the PA file. The issues raised are summarised as follows:

- Issues raised relating to the submitted site boundary which includes land outside the control of the applicant.
- The shed at the public road is in the ownership of the observer and no consent for the making of the application was given.
- Access and wayleaves will be required over third-party property for services and other works.
- The development will impact on the use of the storage shed which has been used uninterrupted for 50 years.
- The development will create a danger for the observer as machinery and vehicles will be passing within 18 inches of the door to the store.
- The development will devalue the property.

4.0 **Planning History**

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

4.1.2. There is no recent planning history associated with the immediate surroundings other than the following application which relates to the lands immediately adjacent to the subject site. The application was withdrawn prior to the PA making a decision.

PA ref: 18/4760: Permission sought for site development works for 5 no residential serviced sites off Coach Road and 2 no. residential serviced sites off Anthony's Road.

5.0 Policy Context

5.1. National Policy & Guidelines

5.1.1. National Development Plan 2018 – 2027 (NDP)

The NDP states that

“A fundamental underlying objective of the NDP is, therefore, to focus on continued investment to yield a public infrastructure that facilitates priorities such as high-speed broadband and public transport in better cities and better communities.”

5.1.2. Telecommunications Antenna and Support Structures – Guidelines for Planning Authorities 1996 & Circular Letter PL07/12:

This document provides guidance for the assessment of telecommunication structures and were substantially updated by the DoEHLG Circular Letter PL07/12. Of note, the 2012 Circular provided that:

- Health grounds should no longer be considered.
- Development contributions for broadband infrastructure should be waived.
- The request for bonds should be replaced with an appropriate condition requiring the removal of the mast
- Conditions restricting the life of the permission should not be included
- Separation distances between masts and houses or schools should not be included in development plans.

5.2. Development Plan

5.2.1. The Cork County Development Plan 2014 is the relevant policy document pertaining to this appeal.

5.2.2. Chapter 9 of the Plan deals with Energy and Digital Economy, with Section 9.7 dealing with Digital Economy, including telecommunications infrastructure. The key aim of the Plan is to prioritise the delivery of high-speed broadband infrastructure in consultation with service providers to ensure that the aims and objectives of the plan can be delivered in a timely and efficient manner (Section 9.7.7).

5.2.3. The following policies are considered relevant in this instance:

Policy ED 7-1: Telecommunications Infrastructure:

Support the provision of telecommunications infrastructure that improves Cork County's international connectivity.

Facilitate the provision of telecommunications services at appropriate locations within the County having regard to the DoEHLG Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities".

Have regard to environmental and visual considerations when assessing largescale telecommunications infrastructure.

Policy ED 7-2: Information and Communication Technology:

Facilitate the delivery of a high-capacity ICT infrastructure and high speed broadband network and digital broadcasting throughout the County.

Support a programme of improved high speed broadband connectivity throughout the County and implement the National Broadband Strategy in conjunction with the Department of Communications, Marine & Natural Resources.

5.2.4. The site is also covered by the Fermoy Municipal District Local Area Plan 2017, which includes Kilworth, where it is the stated vision for the town to strengthen the range of services available and to facilitate moderate growth. The subject application site does not have a specific zoning objective.

5.3. **Natural Heritage Designations**

The subject site is not located within any designated site. The closest Natura 2000 site lies approximately 500m to the east being the Blackwater River (Cork/Waterford)

SAC, Site Code 002170. The Blackwater Callows SPA, Site Code 004094 is located approximately 2.2km to the south of the site.

5.4. EIA Screening

5.4.1. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required.

The subject appeal does not relate to a class of development which requires mandatory EIA. The proposed development is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.

5.4.2. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.4.3. Having regard to:

- (a) the nature and scale of the development, and
- (b) the location of the development outside of any sensitive location specified in article 109(4)(a)(v)(III) of the Planning and Development Regulations 2001 (as amended),

It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. This is a First Party appeal, submitted by Eircom Ltd., against the decision of the PA to refuse planning permission for the development. The document outlines the site location, technical justification, environmental considerations and the site selection process with alternative sites considered. The document also sets out the process undertaken during the PAs assessment of the proposed development, including the sequence of events during the application process.

6.2. The grounds of appeal are summarised as follows:

- The applicant did everything possible during the application process to try and address the issue of sightlines.
- A wrongful claim of ownership limited the applicants ability to remove the building to create a two way access into the exchange and caused months of delay.
- Spectrum Telecoms confirmed that the third-party driveway to the south as an alternative access route is acceptable during the construction process.
- The construction management plan has been updated.
- The overall construction period is expected to be 4-5 weeks. The traffic route to site will be signposted.
- The largest vehicle on site will be a 50-tonne crane and a HIAB equipped spoil removal unit, approximately 10 in length. The traffic management plan outlines the barrier set up for the duration of the on-road works.
- Parking on the site will be at the compound and the neighbouring driveway.
- A temporary construction compound will be deployed, and the construction management plan deals with issues relating to Noise, Dust and Dirt.
- A sight distance of 90m is achievable from the entrance and the implementation of traffic management for the construction phase duration would enable the second lane of the road to operate.
- It is submitted that the issue of road safety is not insurmountable, and it is requested that the Board disregards this reason for refusal.

6.3. Planning Authority Response

The Planning Authority has responded to this appeal advising that the relevant issues have been addressed in the reports already forwarded to the Board. No further comments are made.

6.4. Observations

There is one observation noted from Anthony Carroll & Co. Solicitors on behalf of Mr. Sam Walsh. The issues raise relate primarily to the title of the planning unit. The observation sets out a detailed overview of the appellants chain of title to the exchange building together with the observers' title to the storage building (located at the roadside). It is submitted that the appellants failed to respond to letters relating to the matter and the observation includes a number of enclosures.

In addition to the above, the observation raises concerns in terms of interference to his property during the construction and related works. It is noted that the observer has not been consulted regarding inevitable road closures and access to his storage building during that period and will impact his lawful use and enjoyment of the building, which has not been addressed by the appeal.

The observer has not given consent to the use of his property for access and wayleaves in connection with the development and it is considered most unusual that he was not consulted in advance of or during the planning process.

It is concluded that the application and appeal is flawed, and it is requested that permission be refused.

7.0 Assessment

7.1. Having regard to the nature of the proposed development, together with the information presented in support of the proposed development, I consider it appropriate to assess the proposal under the following headings:

- Principle of the proposed development & compliance with Policies
- Roads & Traffic
- Third Party Submission
- Appropriate Assessment

7.2. Principle of the proposed development & compliance with policies.

- 7.2.1. The proposed development seeks to erect a 15m high telecommunications monopole support structure carrying antennas and dishes together with associated ground-based equipment to provide for wireless data and broadband services in the Kilworth area of Co. Cork. The existing site is occupied by an Eir exchange building which is located almost centrally within the site and there is an existing single storey building located immediately adjacent to the public road. The access to the exchange building is via an existing access to the south of the roadside building.
- 7.2.2. The site is located within the settlement boundaries of the village of Kilworth, but there is no specific zoning afforded to the site. I note that the edge of village location presents as a transitional area between urban and rural, with a number of one-off houses along the public road. I also note that to the east of the site, with access off Coach Road, there is a residential estate which comprises a mix of detached, semi-detached and terraced houses. Planning permission has also been granted, now lapsed, for residential development on lands to the west of Anthony's Road. In this context, the subject site is considered to be located within a developing area of Kilworth.
- 7.2.3. The Cork County Development Plan 2014 is the relevant policy document pertaining to this appeal. Chapter 9 of the Plan deals with Energy and Digital Economy, with Section 9.7 dealing with Digital Economy, including telecommunications infrastructure. The key aim of the Plan is to prioritise the delivery of high-speed

broadband infrastructure in consultation with service providers to ensure that the aims and objectives of the plan can be delivered in a timely and efficient manner (Section 9.7.7). The site is also covered by the Fermoy Municipal District Local Area Plan 2017, which includes Kilworth, where it is the stated vision for the town to strengthen the range of services available and to facilitate moderate growth.

7.2.4. The following CDP policies are considered relevant in this case:

- Policy ED 7-1: Telecommunications Infrastructure:
 - Support the provision of telecommunications infrastructure that improves Cork County's international connectivity.
 - Facilitate the provision of telecommunications services at appropriate locations within the County having regard to the DoEHLG Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities".
 - Have regard to environmental and visual considerations when assessing largescale telecommunications infrastructure.
- Policy ED 7-2: Information and Communication Technology:
 - Facilitate the delivery of a high-capacity ICT infrastructure and high speed broadband network and digital broadcasting throughout the County.
 - Support a programme of improved high speed broadband connectivity throughout the County and implement the National Broadband Strategy in conjunction with the Department of Communications, Marine & Natural Resources.

In this regard, I consider that the proposed development accords with the stated policy requirements of the County Development Plan. I am further satisfied that the principle of the development is acceptable in terms of the longstanding presence of the Eir exchange building at this site.

7.2.5. I would note that the Telecommunication Guidelines, at Section 4 deal with development control matters and section 4.2 deals with design and siting and section 4.3 dealing with visual impact. The guidelines indicate a preference for monopoles and as such, I am satisfied, given the design of the proposed mast, that the proposed development is acceptable at this location in principle.

- 7.2.6. With regard to the visual impacts associated with the proposed development, I would acknowledge the location of the site on the northern edges of the built-up area of Kilworth. This area of the village is primarily residential in nature as described above and includes a mix of low-density housing as well as medium density. The subject site is bound by some hedges and trees along the eastern boundary. I do not consider that the existing buildings on the site represent any significant visual impacts. The proposed monopole structure is to be located to the rear of the site, and to the rear of the existing exchange building. The Board will also note the landscaping proposals submitted for the site. I do not consider that any significant visual impacts arise with regard to the proposed development.
- 7.2.7. In terms of the principle of co-location, the Board will note that the applicant submitted an assessment of the relevant existing masts in the wider area and provided reasoning for discounting the two relevant ones for the purposes of their needs. The reasons for discounting the existing structures are identified as being primarily due to the fact that they will not fulfil coverage requirements by reason of them being at capacity or their location is remote, offering limited improvements to coverage in the areas needed.
- 7.2.8. The National Broadband Plan, 2012 Department of Communication, Energy and Natural Resources (DCENR), seeks to change the broadband landscape in Ireland through a combination of commercial and State led investment, and the purpose of the Report of the Mobile Phone and Broadband Taskforce is to deliver the Plan in the shortest time possible time. In terms of the proposed development, I am satisfied that the applicant has presented a reasonable justification for the proposed infrastructure.
- 7.2.9. Overall, and having regard to all of the information available, together with the context of the site and the existing use associated with it, I am satisfied that the visual impacts associated with the proposed development are acceptable and that the development as proposed, seeks to progress national policy to secure the implementation of the National Broadband Plan and seek to ensure that fast and effective broadband facilities are available in all parts of the county. In this regard, I consider that the proposed development is acceptable.

7.2.10. In terms of the reason for refusal cited by the PA, the Board will note that the primary concerns relate to roads and traffic issues while the third-party observer raises questions regarding the legal interest in the site. I will deal with these matters in turn further below.

7.3. Roads & Traffic

7.3.1. The Board will note the concerns raised by the Cork County Council Area Engineer with regard to the access to the site. The sole reason for refusal relates to the limited capacity and inadequacy of the splays at the entrance to accommodate the vehicular traffic associated with the proposed works. The PA concluded that the proposed entrance arrangement to serve traffic associated with the development would endanger public safety by reason of traffic hazard. The Board will note that the existing entrance to the Eir exchange building, which runs along the southern gable of the roadside building, is approximately 3m in width at its narrowest. I also note that the preference of the County Council would be that the roadside building be demolished in order to provide an improved access / egress to the site.

7.3.2. In response to the PAs initial concerns, the applicant submitted a proposal, with the relevant consents, to use the access of the adjoining residential property to construct the telecommunications infrastructure at the site. It is submitted that the existing entrance, located to the south of the subject site, will be used for parking of staff vehicles, material deliveries, removal of spoil, pouring of concrete and other associated works, while all parking will be in a neat manner so as not to obstruct Eir exchange personnel attending the building or the neighbouring property.

7.3.3. The submitted Construction Management Plan sets out the details of the proposed construction works, including the detail of machinery to be used at the site, and I note that the expected construction period is 4-5 weeks. Section 4.3 to 4.5 of the CMP sets out the traffic management which will be put in place while Section 3.10 clearly states that a lane closure will be applied for during the required larger truck works.

7.3.4. In the first party appeal, the appellant has sought to deal with the issue of access and transport and sets out the sequence of events whereby the applicant sought to address the issue of sightlines. I have read and considered all of the information on

the file, and having undertaken a site visit, I would agree that the existing access to the site is somewhat restricted. However, given the limited nature of the development proposed, together with the limited vehicular traffic generated by the operation of a telecommunications support structure, I would not consider that the resulting traffic hazard arising from the construction period of 4-5 weeks is so significant as to warrant refusal of permission. I would wholly agree that during the construction period, there will be disruption to existing road users, with potential for some delays on Anthonys Road. However, subject to appropriate traffic management during this period, I do not consider that the development would endanger public safety by reason of traffic hazard. A condition of permission relating to traffic management could be included in any grant of planning permission and should be agreed with the PA prior to commencement of development.

7.3.5. I am satisfied that the PAs reason for refusal, therefore, can be set aside.

7.4. Third Party Submission

7.4.1. The Board will note that a third-party has raised issues in relation to the title of the lands identified within the planning application. While the original 'red-line boundary' of the site relates specifically to the location of the proposed telecommunications infrastructure, the 'blue-line boundary' includes the roadside storage building. The third party, through his solicitor, has submitted that this building is not within the ownership of the applicant and no permission or consent was sought or given for the making of the application. The Board will note that the red-line site boundary was altered following the submission of the response to the FI request to include the full plot.

7.4.2. I have read and had regard to all submissions made with regard to the issue of title. I also note the submission of the third-party that the current applicant has not consulted him in relation to the issue. I do note that the nature of the proposed development does not appear to impact on the roadside building, other than potential restrictions on access during the construction phase. I also note the applicants' response to the matter. While I acknowledge the above, I consider that the issue of title is a civil matter, and that the applicant has submitted adequate information to appropriately make the planning application. Overall, I would be satisfied that the provision of Section 34(13) of the Planning & Development Act, 2000 as amended,

which states 'A person shall not be entitled solely by reason of a permission under this section to carry out any development' is sufficient to ensure that the civil issue is rectified prior to the commencement of development on the site.

7.5. Appropriate Assessment

- 7.5.1. The subject site is not located within any designated site. The closest Natura 2000 site lies approximately 500m to the east being the Blackwater River (Cork/Waterford) SAC, Site Code 002170. The Blackwater Callows SPA, Site Code 004094 is located approximately 2.2km to the south of the site.
- 7.5.2. Having regard to the nature and scale of the proposed development, I am satisfied that no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. It is recommended that the proposed development be granted for the following stated reasons and considerations and subject to the stated conditions.

9.0 Reasons and Considerations

Having regard to the following matters:

- (a) the provisions of the Cork County Development Plan 2014,
- (b) the guidelines relating to Telecommunications Antennae and Support Structures which were issued by the Department of the Environment and Local Government to planning authorities in July 1996,
- (c) Circular Letter PL/07/12, issued by the Department of the Environment, Community and Local Government in October 2012,
- (d) Circular Letter PL/01/2018, issued by the Department of the Environment, Community and Local Government in February 2018,
- (e) the use of the site as the Eir Exchange,
- (f) the nature and scale of the proposed development,

- (g) the submissions and observations received, and
- (h) the planning officers report and decision of the planning authority,

The Board considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of the visual amenity of the area, would not seriously injure the residential amenities of adjoining properties and would be acceptable in terms of roads and traffic. The proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and further information submitted on the 12th August 2021, except as may otherwise be required in order to comply with the following conditions.

Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Prior to the commencement of any development on the site, full details of traffic management proposals for the duration of the construction period shall be submitted for the written agreement of the Planning Authority.

Reason: In the interest of minimising disruption to existing road users and to prevent traffic hazard.

3. A low intensity fixed red obstacle light shall be fitted as close to the top of the mast as practicable and shall be visible from all angles in azimuth. Details of this light, its location and period of operation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public safety.

3. Details of the proposed colour scheme for the telecommunications structure, ancillary structures and fencing shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

4. No advertisement or advertisement structure shall be erected or displayed on the proposed structure or its appendages or within the curtilage of the site without a prior grant of planning permission.

Reason: In the interest of the visual amenities of the area.

A. Considine

Planning Inspector

30th January, 2022