



An
Bord
Pleanála

Inspector's Report

ABP-311525-21

Development	To erect an 18m high monopole telecommunications support structure.
Location	Logstown Road , Kilcullenbridge Td. , Kilcullen, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	201561
Applicant(s)	Eircom Limited
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Eircom Limited
Observer(s)	Howard Berney
Date of Site Inspection	14 th January 2022
Inspector	Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.01 hectares, is located to the north of Kilcullen and on the northern side of Logstown Road. The appeal site is occupied by an existing telecommunications exchange with a single-storey building on site and a 10m high telecommunication support structure along its eastern boundary. The appeal site adjoins (north west of the site) the rear yard area associated with a two-storey dwelling facing the R448. To the north and east of the site is Kilcullen Tennis Club.

2.0 Proposed Development

- 2.1. Permission is sought to erect an 18m high monopole telecommunication support structure together with antennas, dishes and associated equipment.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on two reasons...

1. Policy TL6 of the Kildare County Development Plan 2017-2023 states that it is the policy of the Council to “Achieve a balance between facilitating the provision of telecommunications infrastructure in the interests of social and economic progress and sustaining residential amenity and environmental quality”. Having regard to the proximity of the proposed telecommunications structure within 5m of the rear elevation of the neighbouring residential property to the west, it is considered that the proposed development would materially contravene Policy TL6 of the Kildare County Development Plan 2017-2021, would seriously injure the visual and residential amenities of properties in the vicinity and accordingly would be contrary to the proper planning and sustainable development of the area.

2. Notwithstanding the technical documentation and particulars submitted with the application outlining the need for such infrastructure, the Planning Authority is not

satisfied that the assessment of alternative locations has been sufficient to determine that the subject site, close to residential areas, is the optimum location/last resort for the proposed development, which would be contrary to the provisions of Section 8.13 of the Kildare County Development Plan 2017-2023 which seeks the avoidance of free standing masts in the immediate surrounds of small towns and villages.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (12/02/21): Further information including submission of further technical analysis to justify the location/examination of alternatives, details of planning history regarding other telecommunication structures on site and response to the issues raised in third party submissions.

Planning Report (01/09/21): It was considered that the proximity of the structure to existing dwellings and overall visual impact was unacceptable, and that the applicant had failed to provide sufficient justification for the structure at this location contrary to Development Plan policy. Refusal was recommended based on the reasons outlined above.

3.2.2. Other Technical Reports

Environment Section (22/01/21): No objection.

EHO (26/01/21): No objection subject to conditions.

Roads & Transportation (04/02/21): No objection subject to condition.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

3.4.1 Four submissions

Howard Berney

Frances Moloney

Joseph J. Warren

Cllr Fiona McLoughlin

The issues raised can be summarised as follows...

Impact on residential amenity due to proximity and scale, adverse visual impact, insufficient justification or assessment of alternative locations, proximity to dwellings and a school, traffic hazard issues, devaluation of property and health risk concerns.

4.0 Planning History

No planning history.

5.0 Policy Context

5.1. Development Plan

Kilcullen Local Area Plan 2014-2020

The appeal site is zoned E Community and Educational with a stated objective 'to protect and provide for educational facilities'.

Section 7.3.6 Transitional Areas:

While the zoning objectives indicate the different uses permitted in each zone it is important to avoid abrupt transitions in scale and use at the boundary of adjoining land use zones. In these areas it is necessary to avoid developments that would be detrimental to amenity. In zones abutting residential areas, particular attention will be paid to the uses, scale, density and appearance of development proposals and to landscaping and screening proposals in order to protect the amenities of residential properties.

Kildare County Development Plan 2017-2023

Section 8.13 Telecommunications Infrastructure

TL 1 Support national policy for the provision of new and innovative telecommunications infrastructure and to recognise that the development of such infrastructure is a key component of future economic prosperity and social development.

TL 2 Promote and facilitate the provision of an appropriate telecommunications infrastructure, including broadband connectivity and other technologies within the county.

TL 3 Co-operate and co-ordinate with relevant bodies regarding the laying of key infrastructural services within towns and villages and, where practicable, encourage the efficient and shared use of said infrastructural services.

TL 4 Co-operate with telecommunication service providers in the development of the service, having regard to proper planning and sustainable development.

TL 5 Have regard to the provisions of the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (1996) and circular letter PL07/12 and to such other publications and material as may be relevant during the period of the Plan.

TL 6 Achieve a balance between facilitating the provision of telecommunications infrastructure in the interests of social and economic progress, and sustaining residential amenity and environmental quality.

TL 7 Ensure that the location of telecommunications structures minimises and/or mitigates any adverse impacts on communities, public rights of way and the built or natural environment.

TL 8 Minimise the number of masts and their visual impact on the environment, by continuing to facilitate appropriate development in a clustered manner, where feasible, respecting the scale, character and sensitivities of the local landscape, whilst recognising the need for economic activity within the county. It will be a requirement for applicants to satisfy the planning authority that a reasonable effort has been made to share installations. In situations where it is not possible to share a support structure, applicants should be encouraged to share a site or to locate adjacently so that masts and antennae may be clustered.

TL 9 Minimise the provision of overground masts and antennae within the following areas:

- Areas of high amenity/sensitive landscape areas (refer to Chapter 14);
- Areas within or adjoining the curtilage of protected structures;
- On or within the setting of archaeological sites.

TL 10 Discourage the development of individual telecommunications support structures and antennae for private use.

TL 11 Require all telecommunications services to be placed underground and that any works carried out on footpaths make provision for future services.

5.2 National Policy

Telecommunications Antennae and Support Structures Guidelines for Planning Authorities Section 4.2 Design and Siting “The design of the antennae support structure and to a great extent of the antennae and other “dishes” will be dictated by radio and engineering parameters. There may be only limited scope in requesting changes in design. However, the applicant should be asked to explore the possibilities of using other available designs where these might be an improvement. Similarly, location will be substantially influenced by radio engineering factors. In

endeavouring to achieve a balance some of the considerations which follow are relevant". "Only as a last resort and if the alternatives suggested in the previous paragraph are either unavailable or unsuitable should free-standing masts be located in a residential area or beside schools. If such a location should become necessary, sites already developed for utilities should be considered and mast and antennae should be designed and adapted for the specific location. The support 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".

Section 4.3 Visual Impact

"Whatever the general visual context, great care will have to be taken when dealing with fragile or sensitive landscapes, with other areas designated or scheduled under planning and other legislation, for example, Special Amenity Areas, Special Protection Areas, the proposed Natural Heritage Areas and Special Areas of Conservation and National Parks. Proximity to listed buildings, archaeological sites and other monuments should be avoided.

In rural areas towers and masts can be placed in forestry plantations provided of course that the antennae are clear of obstructions. This will involve clearing of the site but in the overall will reduce visual intrusion. Softening of the visual impact can be achieved through judicious choice of colour scheme and through the planting of shrubs, trees etc as a screen or backdrop.

Some masts will remain quite noticeable in spite of the best precautions. The following considerations may need to be taken into account:

- Along major roads or tourist routes, or viewed from traditional walking routes, masts may be visible but yet are not terminating views. In such cases it might be decided that the impact is not seriously detrimental
- Similarly along such routes, views of the mast may be intermittent and incidental, in that for most of the time viewers may not be facing the mast. In these circumstances,

while the mast may be visible or noticeable, it may not intrude overly on the general view of prospect

5.3 Natural Heritage Designations

None in the zone of influence of the project.

5.4 EIA Screening

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

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by Towercom on behalf of the applicant, Eircom Limited. The grounds of appeal are as follows...

- The applicant notes that permission should be permitted on the basis of Section 37(2)(b)(iii)...having regard regional and national policy under Section 28 guidelines.
- There is an existing 12m high support structure facilitating Vodafone at the Eir exchange. The applicant does not have representation in the town and the existing structure is incapable of supporting both the proposed and existing operator.
- The site is zoned Community and Educational facilities however is a long established as site providing for telecommunications and utilities and the zoning of the site is not consistent with the established character of such.
- The proposal would neither be contrary section 8.13 or Policy TL6 of the County Development Plan which reference the national guidelines under Policy TL1.

- The design and siting of the structure would be consistent section 4.2 of the National Guidelines with use of an established site for telecommunication structures and the provision of slim monopole type support structure.
- It is stated that visual impact of the proposal will be acceptable and will be mitigated by the fact views are partial and intermittent in the surrounding area as well as the use of a monopole structure and such is in accordance with section 4.3 of the guidelines.
- The appellant argues the proposal would not devalue property and that the existing 12 m structure on site can be removed to reduce impact.
- The site is suitable due to its existing use in terms of telecommunication infrastructure, facilitates an improvement in coverage in an area where such is deficient. A full technical justification was submitted and such is based on existing coverage deficiencies as well as consideration of other locations/alternatives that have been discounted as less suitable.
- The proposal is consistent with regional and national planning guidance and policy including the National Planning Framework and the National Development Plan.
- The applicant as a mitigation measure suggest removal of the existing 12m support structure, and relocation of the antennae on such onto the new structure, but notes that this will use up the capacity of the new structure with no capacity for additional operators.

6.2. Planning Authority Response

6.2.1 Response by Kildare County Council

- The PA has not further comment to make.

6.3. Observations

6.3.1 Observation from Howard Berney, Birchmount, Hillside, Kilcullen Co. Kildare. The issues raised can be summarised as follows...

- Adverse visual impact in the surrounding area and in the context of Dorcas House, which is of considerable age, proximity to an existing dwelling and subsequent impact on residential amenity, the site does not lend itself to additional screening due to its restrictive dimensions, proximity of an existing school and community sports facility, adverse impact on property value and potential health concerns.

7.0 Assessment

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Appropriateness of the location, technical justification

Land use zoning/planning policy/adjoining amenity

Visual Impact

Section 37(2)

7.2 Appropriateness of location, technical justification:

7.2.1 The second refusal reason relates to fact that it was considered the applicants had failed to provide sufficient justification for the proposed development at this location in terms of both technical justification and assessment of alternative location and that the provision of freestanding mast would be contrary to the provisions of Section 8.13 of the Kildare County Development Plan 2017-2023.

7.2.2 In relation technical justification the applicant submitted a report outlining details of existing outdoor 4G coverage for Eir indicating a deficiency in coverage to the north and east of Kilcullen. The report outlines exiting telecommunications sites in the area, which were discounted based on their location relative to the area targeted for improved coverage, capacity issues and issues regarding scale of existing support structures. It was considered appropriate to use the existing Eir exchange for the purposes of improving telecommunication infrastructure given its existing use and role. The Planning Authority were not satisfied with the information submitted with application in relation to this issues and required further information justifying the

location. The response reiterated and elaborated the applicants' requirements in terms of improved coverage and outlined existing deficiencies in such. The response also elaborated regarding alternatives including existing sites and outlined that there is a lack of suitable sites within the targeted coverage area.

7.2.3 In my view the application includes technical justification for the proposed development indicating that there are service/coverage deficiencies in the area the proposal is set to address. The information on file also provides detail of existing support structures examined as an alternative to the provision of a new support structure in the area. It is indicated that these structures do not facilitate the provision of the necessary coverage for the area in question due to issues such as capacity and location. I would consider based on the information submitted that there is a technical justification for the proposal and that the provision of such would be consistent with Development Plan policy in regards to improved telecommunications provision. I am also satisfied the applicant has submitted sufficient information to demonstrate the need for an additional telecommunication support infrastructure and has complied with Development Plan policy and the provisions of Telecommunications Antennae and Support Structures Guidelines for Planning Authorities. In addition I would note that the site is an established location for telecommunication infrastructure and not a new location with a long established history for such development at this location and such is consistent with the national guidelines and a logical location for the siting of new/upgraded telecommunication infrastructure.

7.3 Land use zoning/planning policy/adjoining amenity:

7.3.1 The proposal is for a new 18m high support structure within the confines of an existing telecommunication exchange compound. The appeal site is zoned E Community and Educational with a stated objective 'to protect and provide for educational facilities'. There is a land use zoning matrix, Table 15 of the Local Area Plan however such does not include telecommunications as a category. I would of the view that given the site is a long established site facilitating telecommunications

infrastructure that the principle of proposed development in terms of land use zoning is acceptable.

7.3.2 Permission was refused on that basis that the proposal represents a material contravention of Policy TL6 of which it is an objective to “achieve a balance between facilitating the provision of telecommunications infrastructure in the interests of social and economic progress and sustaining residential amenity and environmental quality”. It was considered that the proximity of the proposed structure to an adjoining residential property would seriously injure the visual and residential amenities of properties in the vicinity and accordingly would be contrary to the proper planning and sustainable development of the area.

7.3.3 Under Section 4.2 of the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities Section in relation to Design and Siting it is noted that “The design of the antennae support structure and to a great extent of the antennae and other “dishes” will be dictated by radio and engineering parameters. There may be only limited scope in requesting changes in design. However, the applicant should be asked to explore the possibilities of using other available designs where these might be an improvement. Similarly, location will be substantially influenced by radio engineering factors. In endeavouring to achieve a balance some of the considerations which follow are relevant”. “Only as a last resort and if the alternatives suggested in the previous paragraph are either unavailable or unsuitable should free-standing masts be located in a residential area or beside schools. If such a location should become necessary, sites already developed for utilities should be considered and mast and antennae should be designed and adapted for the specific location. The support 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”. I would be of the view that the proposal in this case is compliant with this aspect of National policy. The applicant has submitted a technical justification for the proposal and an assessment indicating how alternative locations are not available. In addition the proposal uses an established site for telecommunication infrastructure and the proposal is for a monopole structure.

7.3.4 In relation to adjoining amenity I do have concerns regarding the proximity of the proposed structure to the existing dwelling to the north west. The appeal site is restricted in size with the new support structure located at the north western corner of the site. It is located tight to the boundary with the adjoining dwelling and in close proximity to the rear of the existing dwelling and its private rear amenity space. Existing boundary treatment consists of a low wall with no proposal for any additional boundary treatment. I would be of the view that the structure would have an overbearing and disproportionate impact on the existing dwelling by virtue of its positioning on site and in such proximity to the rear private amenity space associated with the existing dwelling. Local Area Plan policy in terms of zoning does refer to transitional areas (Section 7.3.6) with it stated that “it is important to avoid abrupt transitions in scale and use at the boundary of adjoining land use zones. In these areas it is necessary to avoid developments that would be detrimental to amenity. In zones abutting residential areas, particular attention will be paid to the uses, scale, density and appearance of development proposals and to landscaping and screening proposals in order to protect the amenities of residential properties”. The appeal site is zoned E, Community and Educational with a long standing telecommunication use whereas the adjoining site to the north west is zoned B, Existing residential and Infill under the Local Area Plan.

7.3.5 Policy TL 6 states it is an objective to seek to “achieve a balance between facilitating the provision of telecommunications infrastructure in the interests of social and economic progress, and sustaining residential amenity and environmental quality”. Having regard to the proximity of the support structure to the rear amenity space associated with the existing dwelling and the lack of good separation (in the form of boundary treatment) between it and the adjoining development, the proposed support structure would have an overbearing and disproportionate impact on the existing dwelling. Such would, therefore, be contrary Policy TL6 of the Kildare County Development Plan 2017-2023 and Section 7.3.6 in relation to transitional areas under the Kilcullen Local Area Plan 2014-2020 and would be injurious to residential amenity. I would be of the view that if the support structure was provided on the eastern side of the exchange building such would give enough separation

between it and the existing dwelling with the use on the eastern side of the site being public uses. There is an existing smaller support structure on this side of the exchange structure and it is not clear whether there is sufficient space to accommodate the proposed support structure on this side (if there was I would consider it an acceptable amendment). On the basis that it is not clear whether the proposal could be accommodated on the eastern side, I would recommend refusal of the proposed development.

7.3.6 In relation to health issues raised by the observer I would note that subject to the proposed infrastructure being installed, operated and maintained so that there is compliance with the international standards relating to emission of non-ionising radiation, the safety standards under COMReg and relevant guidance, standards and legislation no issues with regard to risk to public health from a planning perspective should arise.

7.4 Visual Impact:

7.4.1 Visual impact was not a reason for refusal but has been raised by the observer and was an issue raised in the third party submissions. The applicant was requested to provide a visual assessment of the proposal by way of further information and submitted photomontages illustrating the visual impact of the proposal from viewpoints in the surrounding area (3). The existing structure on site include a single-storey exchange structure, a 10m high support structure with antennae (14m high). which is a 10m high (13m with attached antennae) is already visible in the area. The proposal is for an 18m support structure (20m high with antennae). I would be of the view that despite the increased height the overall visual impact of the proposal in the surrounding area would be acceptable and such is illustrated in the photomontages submitted. Views of the proposed structure are partial views and obstructed by existing structures in the vicinity. In addition I would note that the type of structure proposed is a monopole structure in keeping with the recommendations of national guidance for new structures within urban areas. I am satisfied that the proposal is acceptable in the context of the visual amenities of the area.

7.5 Section 37(2)(b):

7.5.1 Refusal reason no. 1 stated that “having regard to the proximity of the proposed telecommunications structure within 5m of the rear elevation of the neighbouring residential property to the west, it is considered that the proposed development would materially contravene Policy TL6 of the Kildare County Development Plan 2017-2021, would seriously injure the visual and residential amenities of properties in the vicinity and accordingly would be contrary to the proper planning and sustainable development of the area”. The appellant has argued that the proposal should be permitted in the context of Section 37(2)(b)(iii).

Under Section 37(2)...

(2) (a) Subject to *paragraph (b)*, the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under *section 28*, policy directives under *section 29*, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

(c) Where the Board grants a permission in accordance with *paragraph (b)*, the Board shall, in addition to the requirements of *section 34 (10)*, indicate in its decision

the main reasons and considerations for contravening materially the development plan.

7.5.2 Policy TL 6 seeks to “achieve a balance between facilitating the provision of telecommunications infrastructure in the interests of social and economic progress, and sustaining residential amenity and environmental quality”. I would question whether the proposed development constitutes a ‘material’ contravention of Development Plan policy as the nature of the policy is subjective in terms of its assessment. As noted earlier I would consider that the proposal by virtue of its relationship to the existing dwelling is contrary to Policy TL6 under the Kildare County Development Plan 2017-2023, however I would not consider the proposal is a material contravention of Development Plan policy.

7.5.3 Notwithstanding such I would consider that the proposal would meet the criteria set out under Section 37(2)(b)(iii) in that the proposal is compliant with Section 28 guidelines in the form of the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities with such outlined in previous sections of this report. I also consider that Section 37(2)(b)(iv) also applies having regard to long established pattern of development in terms of the use of the site for telecommunications infrastructure.

8.0 **Appropriate Assessment**

8.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, 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.

9.0 **Recommendation**

9.1. I recommend refusal based on the following reason...

10.0 Reasons and Considerations

1. Having regard to the proximity of the support structure to the rear amenity space associated with an existing dwelling immediately to the north west of the site and the lack of good separation (in the form of boundary treatment) between it and the adjoining development, the proposed support structure would have an overbearing and disproportionate impact on the existing dwelling. The proposal would, therefore, be contrary Policy TL6 of the Kildare County Development Plan 2017-2023 and Section 7.3.6 in relation to transitional areas under the Kilcullen Local Area Plan 2014-2020 and would be seriously injurious to residential amenity. The proposed development would, therefore be contrary to the proper planning and sustainable development of the area.

Colin McBride
Senior Planning Inspector

24th January 2022