



An  
Bord  
Pleanála

**Inspector's Report**  
**ABP311657-21**

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<b>Question</b>	Whether the erection of 4 mobile phone masts and antennae are or are not development or are or are not exempted development.
<b>Location</b>	Bridgewater Shopping Centre, Arklow, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority Reg. Ref.</b>	EX25/2021
<b>Referrer(s)</b>	Maura O' Grady.
<b>Type of Case</b>	Referral.
<b>Planning Authority Decision</b>	Is exempted development.
<b>Type of Referral</b>	Third Party.
<b>Owner Occupier(s)</b>	Pegasus Group.
<b>Observer(s)</b>	N/A.
<b>Date of Site Inspection</b>	12.07.2022.
<b>Inspector</b>	Mary Mac Mahon.

### 1.1. Introduction

- 1.2. The referrer requested a declaration from Wicklow County Council in respect of four mobile phone masts and antenna on the roof of the Bridgewater Shopping Centre. The planning authority declared that the telecommunications infrastructure are development and are exempted development. The referrer has referred this declaration to An Bord Pleanála.

### 2.0 Site Location and Description

- 2.1. The Bridgewater Shopping Centre is located on North Quay, Ferrybank, Arklow. It is on the north side of the Avoca River. To the south and east is car parking and playing fields. To the north is residential development. The roof of the shopping centre is flat, but set on a number of different levels. The telecommunications infrastructure is located on the northern part of the roof of the centre. The infrastructure is on two different levels, accessed externally by way of a ladder.
- 2.2. On the lower level, is an existing Three Ireland 600 Dish, three cabinets and access ladder to the next level of roof. At the higher level roof are two sets of two crucifix support poles, facing north and south. There is a 2 metres long quad band and 600mm dish on the Eir pole, with a lighting finial on the northern and southern side of the roof. A similar arrangement is provided for the Vodafone pole.

Commented [MO1]:

### 3.0 The Question

- 3.1. The question is whether the telecommunications infrastructure on the roof of the Bridgewater Shopping Centre are or are not development and are or are not exempted development.

### 4.0 Planning Authority Decision

#### 4.1. Decision

Is development and is exempted development.

## 4.2. Planning Authority Reports

### 4.2.1. Planning Reports

The planner's report set out the legislative basis in relation to antennae. The erection of antennae and support structures constitutes works. The relevant class for exemptions for such development is Class 31: Part 1, Schedule 2 of the Planning and Development Regulations, 2001 as amended. Additional information is required to confirm whether the development constitutes exempted development. It was noted that a letter of notification was received in relation to two antennae, but not for the additional two. Confirmation of the height of the supporting structure, access to the roof and the field strength of the antennae.

The Response to the Further Information request was been received from the Pegasus Group. It includes a copy of a letter from recorded delivery to the planning authority, dated 30.07.2019. The letter sets out the intention to provide two antennae supported by fixtures which do not exceed the parapet by 3 metres, two number 300mm dishes and 1 equipment cabin, not exceeding 2 cubic metres, to be erected by Eir (under Meteor Mobile Communications Ltd, who are statutory undertakers), in 2019. The supporting structure does not exceed the height of the existing parapet by more than 3 metres. Access to the roof is limited to those authorised by the statutory undertaker. The field strength of the antennae are in accordance with the limits specified by the Commission for Communications Regulation.

The planner's report noted that while there is no confirmation letter, the planning authority records are incomplete and it does not indicate that one was not sent in. All other matters are compliant with the provisions of the Class 31 (K) limitations and there is nothing in Article 9 that would restrict the exemption.

### 4.2.2. Other Technical Reports

Not applicable.

## 5.0 Planning History

UD 55412 – 4 antennas – File closed on the basis that the development complied with the exempted development provisions.

ATC PRR 05/125 – Permission for revision to the development permitted below, providing for an additional 2,042 square metres. No copy of this permission was available on the website of the planning authority.

ATC PRR 04/120 – Permission granted for the demolition of a timber yard and warehouse and construction of a roundabout, pedestrian boardwalk, mixed use development of retail, offices, cinema, housing and car parking. No copy of this permission was available on the website of the planning authority.

## 6.0 Referrer's Submission

6.1. The grounds of the submission of the referrer, Maura O'Grady, is summarised below. It includes photographs, letters to Comreg, Vodafone, Aramark and the planning authority. Ms. O' Grady states:

- The masts overlook the back of her bungalow and will force her to leave the property after 45 years and the community that she is very attached to.
- There is no need for the masts to be located here and could be moved to a less contentious location on the roof of the Bridgewater Centre.
- The centre has been recently sold.
- The masts are a risk to health – evidence of the referrer's ill health and an article from 2000 relating to EMF and cancer are provided.
- The masts devalue the property

## 6.2. Response from Owner Occupier

6.3. Pegasus Group (occupier on behalf of Eir), responded and copies of the notification to Wicklow County Council, the Radio Emissions Statement and Further Information Response are provided. The contents are summarised as follows:

- Two companies telecommunication equipment are present on the roof of the Bridgewater Shopping Centre – Eir and Vodafone. The Vodafone equipment (2 no. panel antenna fixed to steep support poles together with associated

equipment cabinets) have been installed since 2008. The Eir telecommunications infrastructure is similar and was installed in 2019.

- A copy of the notification and ICNIRP Certificate (Radio Emissions Statement) is enclosed.
- The development complies with all the limitations of Class 31 (f) and (k).
- The absence of a letter of confirmation of notification from the planning authority is not unusual and there is no requirement for one to be issued under the Regulations.
- Pegasus Group have no historical information on the Vodafone equipment, as they are not responsible for this. The referrer may have been unaware of the Vodafone infrastructure until the Eir infrastructure was erected.
- The development is safe and an ICNIRP Certificate is provided.
- Most of urban areas in Ireland are within short distances of telecommunication infrastructure.

6.4. A response from Waterman Consulting Engineers on behalf of Aramark (on behalf of owner), was received and summarised below:

- Wicklow County Council has determined this matter, found the development to be exempt and requests that An Bord Pleanála do likewise.

## 7.0 Legislation

7.1. Section 2 (1) of the Planning and Development Act, 2000, as amended, defines a statutory undertaker as, in this context:

*“a person, for the time being, authorised by or under any enactment or instrument under an enactment to - ...*

*(b) provide, or carry out works for the provision of, gas, electricity or telecommunications services,”*

7.2. Section 3 of the Planning and Development Act, 2000, as amended, defines development as follows:

**3.—(1)** *In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.*

7.3. Works are defined in that section as:

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

7.4. Section 4 states:

*(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—*

*(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or*

*(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).*

*(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.*

*(c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.*

7.5. Section 177U (9) concerns the need to screen referrals for Appropriate Assessment issues:

*(9) In deciding upon F787[a declaration or a referral under section 5] of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section. ]*

7.6. The Planning and Development Regulations, 2001 as amended is considered next. A number of Articles are relevant to the referral:

*Article 5 (2) In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.*

*Article 6. (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.*

*Article 9 (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act— (a) if the carrying out of such development would— (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*

7.7. The section below will consider the Classes of Exempted Development and their limitations.

*CLASS 31 The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of—*

*(f) cabinets forming part of a telecommunications system –*

*Limitation –*

*The volume above the ground-level of any such cabinet shall not exceed 2 cubic metres measured externally.*

*(k) antennae, including small cell antennae, attached to the following existing structures—*

*(i) public or commercial buildings (other than education facilities, childcare facilities or hospitals) by way of attachment to roofs, facades, chimneys, chimney pots or vent pipes;*

*Limitation*

*1. The antenna shall be attached directly to the structure (other than a structure with a flat roof) and not by way of a supporting fixture.*

*2. In the case of a structure with a flat roof, a supporting fixture may be used provided that— (a) the fixture does not exceed the height of any existing parapet or railing on the roof by more than 3 metres, and (b) access to the roof is not available to any person other than a person authorised by the statutory undertaker.*

*3. Where an antenna is attached to the façade of a building or the exterior of a chimney or vent, the colour of the antenna shall match and blend with the colour of such façade, chimney or vent pipe.*

*4. Where the antenna is hidden inside a chimney pot the existing chimney pot may be replaced by a chimney pot in a suitable material which shall be the same colour, size and shape as the replaced pot, and the antenna shall not protrude beyond the top of the chimney pot.*

*5. The planning authority in whose functional area the structure on which the antennae will be attached is situated shall be notified by the statutory undertaker in writing of the proposed location of any such structure at least 4 weeks before such attachment.*

*6. The field strength of any such antenna shall not result in the field strength of the non-ionising radiation emission from the radio installations on the site exceeding the limits specified by the Commission for Communications Regulation.*



*(j) an antenna support structure in place of an existing antenna support structure,*

*Limitation*

*1. The replaced structure shall be removed no later than 4 weeks following its decommissioning.*

*2. Where, for reasons of the integrity of the network or other operational reasons, the structure to be replaced remains in use during the construction of the replacement structure, the replacement structure shall be located as near as possible to the existing structure having regard to construction activity and safety requirements and, in any case, no replacement structure shall be located more than 20 metres from the replaced structure (measured from the base).*

*3. (a) The height of the replacement structure shall not exceed the height of the replaced structure.*

*(b) (i) Subject to sub-paragraph (ii), the width of the replacement structure shall not exceed the width of the replaced structure.*

*(ii) Where the replaced structure was 2 metres or less in width, the width of the replacement structure may not be more than twice the width of the replaced structure, all measurements to be taken at the widest point.*

*(c) Where the replaced structure did not incorporate an antenna platform, the replacement shall not incorporate such a platform.*

*4. (a) Subject to sub-paragraphs (b) and (c), the antennae to be attached to the replacement structure shall not exceed the number of antennae on the replaced structure.*

*(b) For structure under 15 metres in height, an additional 12 antennae for mobile telephony may be attached to the replacement structure, of which not more than 8 of the additional 12 antennae shall be of the dish type (whether shielded or not).*

*(c) For structures of 15 metres or over in height, an additional 18 antennae for mobile telephony may be attached to the replacement structure, of which not more than 12 of the additional 18 antennae shall be of the dish type (whether shielded or not).*

5. (a) *The dimensions of any additional antenna for mobile telephony shall not exceed the greatest length, width or depth of any antenna for mobile telephony of corresponding type on the replaced structure.*

(b) *In any other case, the dimensions of any antenna provided shall not exceed:*

*(i) in the case of any panel type antenna, 3 metres in length x 0.6 metres in width x 0.2 metres in depth,*

*(ii) in the case of any co-linear type antenna, 5 metres in length x 0.1 metres in diameter, and*

*(iii) in the case of any dish type antenna (whether shielded or not), 1.8 metres in diameter.*

6. *The replacement of an antenna support structure together with any replaced or additional antenna shall not result in the field strength of the non-ionising radiation emissions from the radio installations on the site exceeding the limits specified by the Commission for Communications Regulation.*

## 8.0 Natural Heritage Designations

8.1. I have investigated and found that there are no Natura 2000 sites or proposed Natural Heritage Areas within 15km of the site that there are any direct or indirect connections to.

8.2. Having regard to minor scale and the emissions from the development 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 **Assessment**

- 9.1. Before beginning the assessment proper, for the purpose of clarity, the role of An Bord Pleanála in relation to Section 5 referrals will be set out. The purpose of An Bord Pleanála in relation to Section 5 referrals is to ascertain what is and is not development and if development, whether that development is exempted development or not. Therefore, the impact of exempted development, is not relevant to the case, as it would be in a planning application and appeal. Therefore, the planning merits of the case, such as the issue of devaluation of property or otherwise, is not a consideration in the assessment.
- 9.2. The question to be considered is whether the erection of the telecommunications infrastructure, is or is not development and is or is not exempted development.
- 9.3. The erection of the telecommunications infrastructure involved works. Therefore, the erection of the telecommunications infrastructure is development.
- 9.4. In relation to whether the development is exempted development, the restrictions on exemption under Article 9 must be considered. I have no information before me in relation to the conditions of the planning permissions granted for the Bridgewater Shopping Centre. Therefore, I cannot confirm if there is any condition restricting the use of the roof of the shopping centre. In this regard, I am reliant on the planning authority – both the planner’s report and the decision in relation to unauthorised development – that no such condition are attached to the permission, which would prohibit the use of the roof for such infrastructure. I note that the referrer did not refer to any such condition.
- 9.5. The conditions and limitations for exempted development must be tested.
- 9.6. The first issue is whether Eir and Vodafone are statutory undertakers for the purposes of the Planning and Development Act. Both are licenced suppliers of telecommunications services. I am satisfied that they and the companies acting on their behalf, are statutory undertakers for the purposes of exempt development.
- 9.7. Both companies have cabinets associated with their equipment. I am of the opinion that the appropriate ground level in this instance is the relevant level of the roof. I am satisfied that the dimensions of the cabinets do not exceed 2 cubic metre above ground. The cabinets come within the exempted development provisions of Class 31

(f) of the Planning and Development Regulations. I note that the Eir cabinet is new and the Vodafone cabinet is existing and no material change arises. Therefore, for the purposes of this case, the Eir cabinet is development and the Vodafone cabinet, is not development.

- 9.8. In relation to the telecommunications structures erected on behalf of Eir, these structures are located on the flat roof of a commercial building. The antennae are affixed to a supporting structure. The height of the supporting structures do not exceed the parapet of the roof by three metres. Access to the roof is not available to any person other than a person authorised by the statutory undertaker. It would appear that the planning authority was notified in writing of the location of the structure in advance of the structure being erected. Evidence has been supplied in the form of certification that the field strength of the non-ionising radiation emission from the radio installations on the site do not exceed the limits specified by the Commission for Communications Regulations. I am satisfied that these structures come within the conditions and limitations of Class 31 (f) and (k) of the Planning and Development Regulations, 2001, as amended.
- 9.9. In relation to the Vodafone telecommunications equipment, this telecommunications infrastructure are described as replacement telecommunications infrastructure on the drawings provided to the planning authority on 17.09.21 (save for the cabinet). The original supporting poles was 2.1 metres above the parapet height of the roof and were monopole. The antenna was 1.3 metres in length and there was a 300mm dish. The other limitations in this Class do not apply to the infrastructure.
- 9.10. As this telecommunications infrastructure was in place since perhaps 2008, were removed and an upgraded infrastructure installed in 2019, I consider that the Vodafone telecommunications infrastructure comes under Class 31 (j) as replacement telecommunications infrastructure.
- 9.11. The limitations of Class (j) require that the replaced structure be removed no later than 4 weeks following its decommissioning. This appears to have been done. The location appears to be the same as before. Limitation 3 (a) requires that height of the replacement structure shall not exceed the height of the replaced structure. The height of the replacement structure is higher than the original one, by circa 0.9 metres and so exceeds the height limitation under 31 (j) (3a). The width of the replacement

structure appears to come within the limitation. No additional antennae are provided. Limitation 5 (a) requires that the dimensions of additional antennae not exceed the greatest length, width or depth of any antenna of the corresponding type of the replaced structure. This does not apply as there are no additional antennae. Limitation 5 (b) (i) requires that a panel type antenna be no more than 3 metres in length. I am satisfied that the antennae comes within this limitation. I am satisfied that the replacement antenna support structure and replacement antenna do not exceed the limits for the field strength of the non-ionising radiation emissions limits specified by the Commission for Communications Regulation.

## 10.0 Findings

10.1. For convenience, I set out my findings below:

<b>Item</b>	<b>Is / Are or Is / Are Not Development</b>	<b>Is / Are or Is / Are Not Exempted Development</b>
Eir support structures	Are development	Are exempted development
Eir antennae	Are development	Are exempted development
Eir dishes	Are development	Are exempted development
Eir cabinet	Is development	Is exempted development
Vodafone support structures	Are development	Are not exempted development
Vodafone antennae	Are development	Are exempted development
Vodafone dishes	Are development	Are exempted Development
Vodafone cabinet	Is not development	

11.0 **Recommendation**

11.1. I recommend that an Order be set out as below.

12.0 **Draft Order**

**Planning and Development Acts 2000 to 2022**

**Planning Authority: Wicklow County Council**

**Planning Register Number: EX25/2021**

**WHEREAS** questions have arisen in relation to telecommunications infrastructure at the Bridgewater Shopping Centre, Arklow, Co. Wicklow, is or is not development or is or is not exempted development;

**AND WHEREAS** the said questions were referred to An Bord Pleanála by Maura O'Grady on 13<sup>th</sup> day of October, 2021;

**AND WHEREAS** An Bord Pleanála had regard particularly to:

- (a) Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000, as amended;
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Part 1 of Schedule 2, Exempted Development, with particular reference to Classes 31 (f), (j) and (k);
- (d) The planning history of the site;
- (e) The submissions made on file, and
- (f) The report of the Inspector

**AND WHEREAS** An Bord Pleanála concluded that:

- (1) The erection of the Eir telecommunications masts, antennae, dishes and cabinet is development, which comes within the conditions and limitations of Class 31 (f) and (k) of Planning and Development Regulations.

- (2) the replacement of the Vodafone support structures are development and does not come within the limitation of Class 31 (j) 3(a);
- (3) the replacement Vodafone antennae and dishes comes within the limitation of Class 31 (j) 5(b)(i)
- (4) the Vodafone cabinet is not development.

**NOW THEREFORE** An Bord Pleanála, in the exercise of the powers conferred on it by Section 5 (4) of the 2000 Act, hereby decided that:

- (1) The Eir telecommunications infrastructure is development that is exempted development;
- (2) The Vodafone support structure is development that is not exempted development;
- (3) The Vodafone antennae and dishes is development that is exempted development;
- (4) The Vodafone cabinet is not development.

**Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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Mary	Mac	Mahon
Planning		Inspector

29 July, 2022