



An
Bord
Pleanála

Inspector's Report

ABP-312739-22

Development	Retention of 45m lattice communications structure.
Location	Knockaulin Drive, Ferbane, Co. Offaly.
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	214
Applicant(s)	Signal Infrastructure Limited
Type of Application	Planning Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Mary Campbell on behalf of Knockaulin Drive Residents Association
Observer(s)	None
Date of Site Inspection	18 th of May 2022
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. Ferbane is a small rural town in Co. Offaly built on a crossroads along the N62. The stated location of the mast is Knockaulin Drive a small housing estate to the north of the town. Knockaulin Drive rises from the front to the rear of the housing estate in a westerly direction. The mast is located to the west of the estate on an elevated site and is visible from within the estate and the surrounding area.
- 1.2. The site is 0.005ha in size, is located approximately 800m north of the town centre.
- 1.3. There is a row of single storey dwellings backing onto the subject site. The access road to the site is positioned between two of the houses.
- 1.4. The backdrop of the site is scrub and trees. The existing mast is a metal tower with no antennae attached to it.
- 1.5. The site is located adjacent to a Natura 2000 site, Ferbane Bog Special Area of Conservation. (SAC).

2.0 Development

- 2.1. Retention permission of an existing 45metres lattice communications structure together with associated equipment and compound, and permission for attached 3No. antenna and 2No. transmission dishes together with associated equipment and cabinets.

3.0 Planning Authority Decision

3.1. Decision

Offaly Co. Co. granted planning permission for retention of the structure, subject to 8No. standard planning conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Site boundaries were submitted to clarify ownership. The applicant holds a leasehold but does not have freehold title of the lands in question.

- The visual impact assessment is form 6No. viewpoints, and it is considered to be acceptable.
- Appropriate elevation drawings were provided.

3.2.2. ***Other Technical Reports***

Water Services : No objection

Area Engineer: No objection

3.3. **Prescribed Bodies**

No response from any of the Prescribed Bodies notified about the planning application.

3.4. **Third Party Observations**

4.0 **Planning History**

4.1 **Planning Reference 81/686**

Knockaulin Drive/ Delvin Park Communal Aerial Committee sought permission for the erection of a pylon for cable T.V. 160ft high on a corrugated iron type lattice.

4.2 **Planning Reference 01/809**

Jimmy Stewart sought retention permission for the existing telecommunications tower. It was granted a temporary permission for five years. It was conditioned to be used as a television communication structure only.

4.3 **No records of planning enforcement.**

4.4 **Adjacent lands : Planning Reference 20/51**

Minister for Culture, Heritage and the Gaeltacht sought permission for an amenity provision consisting of a 657m timber boardwalk, 120m gravel access path, post and rail boundary fencing, 25m parking bay, a lighting pole and all associated works

5.0 Policy Context

5.1. Development Plan

5.2. *Offaly County Development Plan 2021-2027*

5.5.1 Landscape Policies

Section 4.14.2 Protection of Scenic Views, Prospects and Key Amenities

Protection of Key Scenic Views, Prospects and Key Amenity Routes County Offaly contains a number of valuable views and prospects which offer a very attractive cross-sectional view and overall impression of differing landscapes as one traverses the county. The Council recognises the need to protect the character of the county by protecting Key Scenic Views, Prospects and Key Amenity Routes within the county. The Council will aim to protect sensitive areas from injurious development, while providing for development and change that will benefit the rural community by ensuring that appropriate standards of location, siting, design, finishing and landscaping are achieved from implementing the development management standards contained in Chapter 13 of this plan.

BLP-38 It is Council policy to protect and enhance the county's landscape, by ensuring that development retains, protects and where necessary, enhances the appearance and character of the county's existing landscape

5.5.2 Information and Communication Technologies

Offaly County Council recognises that Information and Communication Technologies (ICT) play a crucial role in enabling social and economic activity and is therefore committed to enhancing the ICT infrastructure throughout the county. It is acknowledged, however, that this must be managed to ensure a balance between the provision of such infrastructure in the interests of social and economic progress, and sustaining residential amenity and environmental quality.

5.8.2 Telecommunications

The Council recognises that there is a balance between facilitating the provision of mobile telecommunications infrastructure and the need to protect residential, visual amenity and the natural and built environment. When considering proposals for

telecommunications infrastructure, the Council will have regard to the Department of the Environment, Heritage and Local Government's "Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities" 1996 and Circular Letter PL07/12 'Telecommunication Antennae and Support Structures' and any amendments thereof.

ENTP-40 It is Council policy to promote and facilitate the sustainable development of a high quality Information and Communications Technology (ICT) network in the county in order to achieve balanced social and economic development whilst protecting the amenities of urban and rural areas.

ENTP-41 It is Council policy to support and facilitate the delivery of the National Broadband Plan and the Offaly Digital Strategy as a means of developing further opportunities for enterprise, employment, education, innovation and skills development.

ENTP-42 It is Council policy to require underground telecommunications ducting to be provided in all new developments and public realm schemes as appropriate, to support the rollout of all digital infrastructure including the National Broadband Plan throughout the county.

ENTP-43 It is Council policy to achieve a balance between facilitating the provision of telecommunications services in the interests of social and economic progress and protecting residential amenity and environmental quality. The Council will have regard to the Department of the Environment, Community and Local Governments Guidelines on Telecommunications Antennae and Support Structures (and any future editions) and Circular Letter PL07/12 (Telecommunications Antennae and Support Structures) in assessing development proposals.

ENTP-44 It is Council policy to avoid the unnecessary proliferation of masts in the county through colocation of antennae on existing support structures and masts. Masts and antennae shall be restricted in the following areas:

5.3. Natural Heritage Designations

The subject site is located alongside Ferbane Bog SAC, which is 40m from the subject site.

Moyclare Bog SAC is 3.07km from the site

Pilgrim's Road Esker SAC is 8.33km

Fin Lough (Offaly) SAC -8.42km

6.0 The Appeal

6.1. Grounds of Appeal

Knockaulin Drive Residents Association has taken this third-party appeal against the planning authority's decision to grant planning permission for the retention of the telecommunications mast. The following is a summary of their grounds of appeal:

6.1.1 ***The applicant does not have a leasehold interest in the property the subject of this appeal***

A statement of the leasehold interest in the property and the Legal Agreement executed with the contractors on behalf of the Committee in regard to the leasehold title to the property.

(a) ***Request for Further Information***

The applicant stated on the planning application form that they are the owners of the subject site and indicated other lands within their ownership that extend to the public roadway/ footpath and some properties within Knockaulin Drive. The response to the further information states the applicant hold a leasehold interest in the property, tower and associated physical infrastructure. It provides a letter of consent form Offaly Co. Co. to submit the planning application.

The applicant has failed to provide an legal basis for his claim to own the land. The applicant's solicitor fails to establish a leasehold interest in the property.

As part of the further information, Mr. Jimmy Stewart sates in a letter any necessary planning applications relating to the mast were made and paid for by him. The submission from Jimmy Stewart claiming leasehold interest is factually incorrect and fails to acknowledge the legal agreement between him and the Knockaulin Drive Residents Committee copy. He fails to acknowledge Planning Permission granted to the Committee as the entity having the leasehold interest in the property where any such interests exists.

It is clear planning application PL2/81/686 that the applicants area Knockaulin Drive/ Delvin Park Aerial Committee.

6.1.2 (b) ***Relevant Planning History***

Ref: 81/686 Knockaulin Drive/ Delvin Park Communal Aerial Committee sought permission for the erection of the pylon for cable T.V. It was a 160ft high corrugated iron type lattice pylon. The permission was for seven years from the grant of permission. There is no record of retention permission. Under reference 01/809 Jimmy Stewart sought retention for an existing telecommunications tower. The permission was for five years only. By condition, the structure it could only used for television communication only. There is no record of enforcement relating to the enforcement case.

6.1.3 ***Proper Planning and Development***

The planning authority had failed to properly consider the impact of the proposed retention in respect of adjacent lands the subject of PL20/51 and the SAC at Ballylin/ Ferbane Bog. The planning authority references the Ministerial Circular PL07/12 in respect of the cessation of time limits on future applications. The planning authority has erred in retrospectively applying this provision to the site in ignoring the planning history time limited conditions.

6.2. **Applicant Response**

The applicant has responded to the points raised in the appeal as follows:

- The planning documents include evidence that the applicant holds a leasehold interest in property but does not currently have freehold title of the lands in question. A letter from the applicant's solicitors relating to transfer of the ownership of the tower and associated equipment. A letter from the former owner of the tower is included in the supporting evidence. The title boundary (in blue) whereon the installation is sited is, as far as the applicant, in ownership with Offaly Co. Co. who provided the letter of consent to lodge the application as is required to meet requirements under Article 22(")(g) of Planning and Development Regulations 2001.

- The purpose of the application is to regularise the unauthorised development with the retention application. Offaly have decided to grant permission for the retention for the retention of the development and so the issue is resolved subject to a final decision by the Board.
- A screening exercise for an appropriate assessment was carried out by Offaly Co. Co. and was deemed that the development was unlikely to have significant effects on European sites – this is included in the county council planners report for reference.
- The Board is requested to uphold the decision of Offaly Co. Co.

6.3. **Planning Authority Response**

The planning authority request the Board to support its decision to grant planning permission for the development.

7.0 **Assessment**

7.1. I inspected the site and considered the appeal file. I consider the issues relevant to this third-party appeal to be the following:

- Legal interest
- Planning Policy
- Visual Impact
- Appropriate Assessment

7.2. ***Legal Interest***

The third party appellants stated the applicant has failed to provide any legal basis of ownership over the property where the mast is located. In response, the appeal file, states the applicant purchased the asset, i.e. the mast from the owner Mr. Jimmy Stewart. The land where the mast is located is in the ownership of Offaly Co. Co. who provided a letter of consent to lodge the application.

I am satisfied the applicant has demonstrated sufficient legal interest in the site.

7.3. ***Planning Policy***

The current policy document is the ***National Planning Framework – Project Ireland 2040***. The development, a 45metre telecommunications structure, is to provide Eir Mobile improvements to their network in the Ferbane area to cater for increased data demands for existing and future customers. The subject site was chosen because the existing tower was identified as a suitable structure in which to position and new base station to provide coverage to the northern part of Ferbane. The proposed development will cater for the transmission of wireless data and broadband services over a wider coverage than currently exists in the area catering for local businesses and the wider community.

Objective 24 – ‘Support and facilitate delivery of the National Broadband Plan as a means of developing further opportunities for enterprise, employment, education, innovation and skills development for those who live and work in rural areas.’

The proposal complies with Ministerial Guidelines which were published in 1996 and expanded under Ministerial Circular PL07/12. The proposal will improve local 3G and 4G services, and meets with national policy.

7.3 Compliance with Development Plan policy

The relevant plan is the Offaly County Development Plan 2021-2027. The current development plan policy has been quoted at considerable length under Section 5 of this report. It is stated in the county development plan, the Council will have regard to the visual impact of the proposed equipment on the natural and built environment, particularly on a sensitive landscape, the potential for co-location and government policy.

Firstly, the existing telecommunications sites were investigated for suitability of co-location for eir base station equipment. There were no sites identified Ferbane and its environs. The closest telecommunications structure is 3km south west of the site the assessment of the ComReg coverage maps in the general area demonstrates masts further 3.5km to the north. There is currently an inadequate mobile voice and data service in the area, and the development will improve mobile voice and data services and reduce the number of dropped/ blocked calls and data sessions associated with the eir network.

7.4. Visual Impact

The structure was originally permitted and erected as a communal aerial for the dwellings in Knockaulin Drive/ Delvin Park. The structure will be visible from the surrounding residential areas, and the N62. The inclusion of dishes and antennae will create a marginal increase in the visual impact of the tower. The subject site is not within a high sensitive or high amenity area, it is located within the urban envelope of Ferbane town, which allows for some absorption into the skyline, and it is not a dominant structure when viewed from the wider area. Overall it is acceptable in terms of visual impact.

7.5. *Appropriate Assessment*

The subject site is 50 metres south of Ferbane Bog SAC, which is listed as a priority habitat of Annex 1 of the E.U. Habitats Directive. Ferbane Bog is a small raised bog which contains good examples of Annex 1 habitats. The existing mast/ lattice structure has existed for over two decades on the site. The proposed new works are contained within the site and there is no disturbance to the ground or current conditions that surround the site. There is an existing access to the site via the neighbouring housing estate for maintenance and proposed installation. I am satisfied that no Appropriate Assessment issues arise. It is not considered 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. I recommend the Board grant planning permission for the development.

9.0 Reasons and Considerations

Having regard to:

- (a) National Planning Framework – Project Ireland 2040,
- (b) The Telecommunications Antennae and Support Structures -Guidelines for Planning Authorities, issued by the Department of Environment and Local Government in 1996,

- (c) The Telecommunications Antennae and Support Structures -Guidelines for Planning Authorities, issued by the Department of Environment and Local Government Circular Letter PL07/12,
- (d) The objectives of the Offaly County Development Plan 2021-2027,
- (e) The nature, scale and location of the proposed telecommunications structure, the proposed development, subject to compliance with the conditions set out below, would achieve the objectives set out in National Policy and the Offaly County Development Plan 2021-2027. It is considered that the proposed development would not seriously injure the visual or residential amenities of the area and would otherwise be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed mast and all associated antennas, equipment and fencing shall be demolished and removed from the site when its no longer required. The site shall be reinstated to its pre-development conditions at the expense of the developer.</p> <p>Reason: In the interests of orderly development.</p>
3.	<p>The antennae type and mounting configuration shall be in accordance with the details submitted with this application, and notwithstanding the provisions of the Planning and Development Regulations 2001, and any</p>

	<p>statutory provision amending or replacing them, shall not be altered without prior grant of planning permission.</p> <p>Reason: To clarify the nature and extent of the permitted development to which this permission relates and to facilitate a full assessment of any future alterations.</p>
4.	<p>A low intensity fixed red obstacle light shall be fitted as close to the top of the mast as practicable and shall be visible 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 the commencement of the development.</p> <p>Reason: In the interests of public safety</p>
5.	<p>Details of the proposed colour scheme for the telecommunications structure and ancillary structures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development.</p> <p>Reason: In the interests of visual amenity.</p>
6.	<p>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 prior grant of planning permission.</p> <p>Reason: In the interest of visual amenities of the area.</p>

. Caryn Coogan
Planning Inspector

03/06/2022