



An  
Bord  
Pleanála

# Inspector's Report Addendum Report ABP-312964-22

<b>Development</b>	A 42m multi-user lattice telecommunications support structure carrying antenna and dishes
<b>Location</b>	Athy Business Campus , Woodcock South , Athy, Co Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	191168
<b>Applicant(s)</b>	Signal Infrastructure
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Kildare Co. Co.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Hibernian Cellular Ltd.
<b>Observer(s)</b>	None
<b>Inspector</b>	Caryn Coogan

## 1.0 Introduction

- 1.1. In my Inspector's Report dated 8<sup>th</sup> of September 2022 I made a recommendation to the Board to refuse planning permission for the proposed development for the following reason:

*Having regard to current development plan policies, 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, and the submissions on the appeal file, it is considered that the proposed development would lead to a proliferation of telecommunications structures where there is an existing rooftop host facility accommodating the service providers in the immediate area, and there is insufficient technical evidence that the coverage in the general area is materially deficient to warrant permitting a free standing mast in the immediate area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

- 1.3 The Board decided to defer the case for further consideration by the reporting inspector, on the 22<sup>nd</sup> of November 2023, to establish the planning status of the former Minch Norton grain silo in the ownership of the third party appellant, Hibernian Cellular Networks Ltd, considering whether it is currently in use as a grain silo or whether a material change of use had occurred, and the status of the associated development i.e. the siting of telecommunications infrastructure thereupon.
- 1.4 Following an inspection of the third party's appellant's site, I wrote an addendum report on the 21<sup>st</sup> of March 2024. I acknowledged the grain silo was now support structure for telecommunications antenna and dishes. The appellant's referred to the structure as a former grain silo in the correspondence. One service provider, Eir, had stated it had used the rooftop of the grain silo as a support structure for over fifteen years. Given the extensive equipment on the rooftop of former grain silo, it was my opinion, a material change of use had occurred from a grain silo to a telecommunications host facility. The interior of the structure was no longer used for storing grain. I could find no evidence of any planning histories relating to the structures on the roof top. Furthermore, based on the evidence, I could not establish which structures pre-dated S.I. 31 of 2018 Planning and Development

(Amendment)(No. 3) Regulations 2018. I considered these outstanding matters to be beyond the remit of the Board.

1.5 In conclusion, I did consider the Board's concerns to be reasonable, given the lack of formal planning history associated with the telecommunications structure on the appellants site, and the original grounds of appeal by the third party stating they had sufficient capacity on the rooftop for co-location of the service providers to provide coverage in the Athy area. The original grounds of the third party appeal stated there is no necessity to build an additional telecommunications tower in Athy, because the existing infrastructure is adequate in all respects with excess capacity for additional equipment for existing and new customers. Therefore the need for a new stand alone lattice structure as proposed by the applicant, was unnecessary.

1.6 The Board decided to defer the case again and issue a Section 137 notice to the parties on the 10<sup>th</sup> of April 2024 citing:

*The Board may not be satisfied on the basis of the material available on file, that the existing structure described by the appellant as an alternative to the development for which permission is sought has the benefit of an appropriate permission that would enable it's use as a support structure for any future proposed antennae.*

*The Board notes that the use of the 'Minch Norton' structure as a grain silo appears to have ceased some time ago.*

## 2.0 Responses Received

### 2.1 Third Party Appellant

2.1.1 In late 2019 Hibernian Cellular Networks Ltd purchased part of the former Minch Norton Malting Works in Athy. It comprised of a circa 1Ha property including an open yard, 11No. commercial units, two of which were leased to independent commercial operators since 2010. Two parts of the premises have been sold and there are 9No. commercial units on current leases.

2.1.2 The grain silo was constructed in 1958 as part of the malting works in Athy. The building formed part of the Minch Norton's commercial facility. It was used to house grain to support the wider commercial use. While grain is agriculturally produced, the grain silo building is a commercial building and not an agricultural one. Since the client purchased the building, it has continued the commercial use of all the former Minch Norton buildings.

- 2.1.3 The use of the rooftop for telecommunication services would have commenced in the late 1980s on foot of the roll out of mobile telecommunications in Ireland by eircell (now Vodafone). Support structures would have been placed on the roof in accordance with the exempt development provisions under Class 25B Local Government (Planning and Development) Regulations SI 403 of 1983.
- 2.1.4 Subsequent exempt development provision were Class 29 Part I, Schedule Two of the Local Government ( Planning and Development) Regulations 1994 and the Planning and Development Regulations 2001. Additional services and equipment were placed on the rooftop in accordance with Section 31(k) of the Planning and Development Regulations 2001 (as amended S.I. No. 31 of 2018).

*Class 31*

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

*(k) 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;*

*(ii) telegraph poles, lamp posts, flag poles, CCTV poles;*

*(iii) electricity pylons;*

*(iv) agricultural storage buildings;*

*(v) water towers*

- 2.1.5 The appellant submits antennae, including small cell antennae, can be attached to the rooftop of their commercial building in accordance with Class 31(k)(i) of the exempt development provisions subject to the statutory undertaker complying with the applicable conditions and limitations. None of the general restrictions on exemption in Article 9 apply, in particular, the appellant's commercial building is not an unauthorised structure nor is the commercial use of the structure which is unchanged form 1<sup>st</sup> of October 1964. It follows the appellant does not require appropriate planning permission to enable the use of the rooftop as a support structure for future antennae which is possible under Class 31(k)(i). The appellant

also states two facility providers have extended their contracts to use the rooftop site in accordance with the conditions and limitations applicable to Class 31(k).

## **2.2 Planning Authority**

2.2.1 The Board is asked to refer to the planning reports, internal department reports and prescribed bodies reports associated with the planning application.

2.2.2 There are no current or recent planning applications and no current unauthorised development cases on the building referred to.

## **3.0 Assessment**

3.1. It is accepted that the grain silo building was constructed pre-1963. Historical photographs of Athy in 1961 illustrate the structure within the Minch Norton complex.

3.2. The appellant submits the building is a commercial building historically, as it was originally part of the Minch Norton buildings and is now part of a smaller commercial development, known as The Maltings Business Park. It has been outlined above by the appellant that telecommunications equipment has been placed on the rooftop under different Planning Regulations. The appellant submits the antennae and small cell antennae can continue to be placed on the rooftop under Class 31 (k)(i) of the Planning and Development Regulations 2001 (as amended).

3.3. It is my opinion, describing the use of the former grain store as 'commercial', is a description used by the appellant to reflect the wording of Class 31 (k)(i) of the Planning and Development Regulations 2001. The former grain store building is not in use, and the former use has ceased for many years. Therefore, it is not a commercial building as such. Its current function is a support structure for telecommunication structures and antennae on it's rooftop. There is no commercial activity or use associated with the building.

3.4. In order to formally assess the merits of the third party's claims that a change of use has not occurred from a grain store to a support structure for telecommunication structures and antennae, the correct procedure under the planning legislation, is a Section 5 Declaration under Planning and Development Act 2000 (as amended).

3.5. I wish to draw the Board's attention to a Referral determined by the Board under Reference **ABP-311097-21** relating to The Maltings Business Park Athy, where the subject grain silo is located. The Referral site is contiguous to former grain silo,

(same site entrance, yard area fronting the grain silo) It was part of the original Minch Norton site. (see map). It is stated on the order the stated previous/ historical use of the site dating back to prior to the appointed day of 1<sup>st</sup> of October 1964 for the production and storage of malt from barley and the storage of grain and spent grain waste and other ancillary processes and stated the subsequent continued use of the site and buildings for industrial activities. Under Article 5 of the Planning and Development Regulations 2001 as amended, there are definitions of 'industrial process' and 'industrial building'. (see attached).

- 3.6. The appellant is now stating the use of the site is 'commercial', with no reference to industrial use as portrayed in the referral history relating to the overall site area.
- 3.7. I do not consider the former grain silo has the benefit of the appropriate planning permission, or a formal Declaration/ Referral indicating the change of use is exempted development. Furthermore, there is currently no commercial use associated with former grain silo, other than it is a support structure for telecommunications antennae. Therefore, I conclude it is debateable or uncertain that the appellant can continue to provide additional equipment on the rooftop under Class 31(k)(i) of the Planning and Development Regulations 2001. In my opinion, the planning status of the existing structures on the rooftop is questionable until the 'use' of the former grain store is formalised under a Section 5 Declaration.
- 3.8. Without a formalised Section 5 Declaration Order, the appellant cannot claim the current use of the former grain silo is 'commercial' or that the current use of the structure does not require planning permission, or that a material change of use of the structure has not occurred. Therefore, without the benefit of an appropriate Declaration/ Referral order or appropriate planning permission, the future use of the structure to support telecommunications antennae is questionable.
- 3.9. I will therefore re-examine the proposed development in this light. Since my previous report of the 8<sup>th</sup> of September 2022, a new county development for Kildare has been adopted.
- 3.10. I refer to my original Inspectors Report of the 8<sup>th</sup> of September 2022. I concluded the principle of the proposed development to be acceptable in terms of planning policy and visual impact. However, I concluded the need for a new mast had not been established by the applicant, and given the evidence from the Comreg Coverage Mapping, the structures on the rooftop of the former grain silo appeared to provide

sufficient coverage for the area. Therefore, a new independent lattice structure in close proximity and at a lower height to the rooftop of the grain silo, appeared to be unsustainable and not warranted. . I had recommended a Refusal of the proposed mast at Athy Business Campus for the following reason:

*Having regard to current development plan policies, 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, and the submissions on the appeal file, it is considered that the proposed development would lead to a proliferation of telecommunications structures where there is an existing rooftop host facility accommodating the service providers in the immediate area, and there is insufficient technical evidence that the coverage in the general area is materially deficient to warrant permitting a free standing mast in the immediate area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

3.9 Having considered the lack of clarity on the planning status relating to existing rooftop host facility in the appellant's ownership, I consider it prudent to revisit my recommendation.

3.10 The applicant *Signal Infrastructure Ltd.* has applied for planning permission for a 42m multi-user lattice structure at Athy Business Campus, which had been granted planning permission previously under planning reference **12/300016**. The previous permission was not carried out and the planning permission expired. Therefore, Signal Infrastructure Ireland reapplied to establish the permission on the site.

3.15 Since the preparation of my original Inspector's Report, a new **Kildare County Development Plan 2023-2029** was adopted. The relevant policies and objectives are:

**EC P20** *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 of County Kildare.*

**EC O81** *Promote co-location to 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, through the development management process, that a reasonable effort has been made to share installations. In situations where it is not possible to share a support structure, masts and antennae shall be clustered.*

**EC O86** *Avoid free-standing masts in the immediate surrounds of small towns and villages. In the vicinity of larger towns communications providers should endeavour to locate infrastructure in industrial estates or on industrial zoned land. Only as a last resort when all other alternatives have been exhausted should free standing masts be located in residential areas or close to schools and hospitals.*

- 3.15 Under the provisions of the Athy Town Development Plan 2021-2027 the subject site is zoned **Q Enterprise and Employment**. The relevant Policy statement in the Athy Plan is Policy 14- to promote and facilitate the development and renewal of energy and communications networks in Athy, while protecting the amenities of the town.
- 3.16 The proposed development complies with current local planning policy.
- 3.17 It will not impact on the visual amenities of the area, given its location alongside a large grain merchant facility in the Athy Business and the scale of the buildings within the overall site.
- 3.18 There is a planning history for a lattice structure on the subject site dating back to 2013 under PI12/300016, which was granted permission by Manager's Order on 15/05/2013. This expired in 2018, as the structure was not built.

## 4.0 Recommendation

I recommend that planning authority's decision to grant planning permission for the proposed development be upheld by the Board.

## 5.0 Reasons and Considerations

Having regard to:

- (a) national policy regarding the provision of mobile communications services;



(b) the Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities issued by the Department of the Environment and Local Government in July 1996, as updated by Circular Letter PL/07/12 issued by the Department of the Environment, Community and Local Government on the 19th day of October 2012;

(c) the policy of the planning authority, as set out in the Kildare County Development Plan 2023-2029, to support the provision of telecommunications infrastructure;

(d) the Enterprise and Employment zoning objective governing the site under the Athy Town Development Plan 2021-2027, and the policies contained therein;

(d) the nature and scale of the proposed telecommunications support structure,

(e) the existing pattern of development in the area

(f) the planning history of the site;

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities or landscape character of the area, and would not be contrary to the overall provisions of the current development plans for the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **6.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 24th day of October 2019, 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. The proposed support structure shall be finished in a dark green or dark grey colour, and the proposed security fence and equipment cabinets shall be finished throughout in a dark green colour only.

**Reason:** In the interest of visual amenity and orderly development.

3. Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority. Reason: In the interest of public health. 4. No advertising signage shall be erected on the monopole mast, equipment cabinets or security fence. Reason: In the interest of visual amenity.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Caryn Coogan  
Planning Inspector

13<sup>th</sup> of September 2024