



An
Bord
Pleanála

Inspector's Report

ABP-313243-22

Development	Installation of 6 meter extension to existing 12 meter monopole (total height 18 meters)
Location	Liscannor , Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	211245
Applicant(s)	Signal Infrastructure Limited
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	John. D. Flanagan
Observer(s)	None
Date of Site Inspection	14/02/2023
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The site is located on the northern boundary of the Liscannor settlement. The site is accessed from a local road c. 170m north of the R478 Regional Road linking Liscannor to Lahinch and around to the N67 just south of Lisdoonvarna. The R478 is identified as a Scenic route in the County Development Plan.
- 1.2. The site is located within an existing agricultural complex including an access track, agricultural buildings and associated structures. An existing 12m high monopole mast with associated equipment is located within the site. The site bounds lands to its south that are zoned Utilities. Lands north of this appear to be in agricultural use.
- 1.3. There is an existing single storey house located at the junction of the private access road and local public road c. 150m to south west of the site.

2.0 Proposed Development

- 2.1. The proposal comprises off-
 - a 6m monopole extension to the existing 12m monopole (total 18m)
 - telecommunications and broadband equipment,
 - associated equipment and cabinets
 - enclosed within a 2.4m palisade fence compound and associated site works
- 2.2. The Planning Authority sought Further Information (FI) on the 24th of January 2022 in relation to the following-
 - Clarity over the planning status of existing mast onsite and if it is a replacement of a previous mast.
 - Clarity over height proposed 18.5m or 18m
- 2.3. The applicants responded on the 14th of February as follows-
 - The existing mast was installed as exempted development in accordance with Part 1 Schedule 2 Class 31 (b) & (f) of the 2001 Regulations (as amended). The works were completed on 28th of January 2019. Three antenna were added in late 2019 under exemption Class 31 (h).

- The mast on site is not a replacement structure for a previous mast.
- The structure is set on a concrete base measuring 0.5m. The overall structure will be 18.5m from ground level but the mast is 18m.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission on the 10th of March 2022 subject to 5 conditions generally of a standard nature for such developments.

4.0 Planning Authority Reports

4.1. Planning Reports

The reports of the Planning Officers reflects the decision of the Planning Authority. The following is noted from the report-

- The principle of the development is acceptable having regard to Objective CDP 8.43 and CDP 8.44.
- The site bounds the northern extent of the settlement of Liscannor. It is within the countryside with land zoned to the immediate south as utilities.
- The site is 200m north of a designated scenic route (R478) (Wild Atlantic Way). There are intermittent views of the mast between gaps in the street frontage of the buildings. The views are partial, temporary and not sustained.
- The need for EIA can be excluded at preliminary examination and a screening determination is not required.
- The proposal is not likely to have a significant effect individually or in combination with other plans and projects on European Sites.
- The existing structure appears to comply with conditions and limitations of class 31 and as such can be considered exempt.

4.2. Other Technical Reports

- West Clare Municipal District
 - 20/12/21- No observations
- Road Design Office-
 - 04/01/22- Sightlines at the junction of the access road and public road do not meet standard required. Given the volume of traffic from the development the standard can be relaxed. Drainage and landscaping issues noted.

4.3. Prescribed Bodies

- IAA-
 - 13/12/21- No requirement for obstacle lighting
- Irish Water-
 - 29/12/21- No objection

4.4. Third Party Observations

There was one third party submissions and the issues raised are covered in the grounds of appeal in section 7.1 of this report.

5.0 Planning History

- None

6.0 Policy Context

6.1. EU- Treaty on the Functioning of the European Union

Article 191 (ex Article 174 TEC)

1. *Union policy on the environment shall contribute to pursuit of the following objectives:*

- *preserving, protecting and improving the quality of the environment,*
- *protecting human health,*
- *prudent and rational utilisation of natural resources,*
- *promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.*

2. *Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.*

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. *In preparing its policy on the environment, the Union shall take account of:*

- *available scientific and technical data,*
- *environmental conditions in the various regions of the Union,*
- *the potential benefits and costs of action or lack of action,*
- *the economic and social development of the Union as a whole and the balanced development of its regions.*

4. *Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.*

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

6.2. National Planning Framework

National Policy Objective 48 states-

'In co-operation with relevant Departments in Northern Ireland, develop a stable, innovative and secure digital communications and services infrastructure on an all-island basis.'

The NPF sets out National Strategic Outcomes including Strengthened Rural Economies and Communities. In this regard the NPF states-

'.....improved connectivity, broadband and rural economic development opportunities are emerging which offer the potential to ensure our countryside remains and strengthens as a living and working community.'

6.3. Regional Spatial & Economic Strategy for the Southern Region

Section 6.2 deals with Digital Connectivity and states-

'Enhanced quality and provision of digital and mobile telecommunications infrastructure is critical for the revitalisation of cities, towns, villages and rural areas. Developments in information and communications technology (ICT) continues to fundamentally change how our society and economy functions.'

The policies in the RSES are structured under Regional Policy Objectives (RPOs)

RPO 137 deals with Mobile Infrastructure and states-

It is an objective to strengthen the continued delivery of high-speed, high-capacity digital and mobile infrastructure investment in our Region and strengthen cross regional integration of digital infrastructures and sharing of networks.

6.4. Telecommunication Antennae and Support Structures: Guidelines for Planning Authorities 1996

These Guidelines set out criteria for the assessment of telecommunications structures. The relevant points to this application and appeal are summarised below.

- planning authorities should not include monitoring arrangements as part of planning permission conditions nor determine planning applications on health grounds. These are regulated by other codes and such matters should not be additionally regulated by the planning process.

- An authority should indicate any locations where telecommunications installations would not be favoured or where special conditions would apply. Such locations might include high amenity lands or sites beside schools (Section 3.2).
- Along major roads or tourist routes, *‘views of the mast may be intermittent and incidental, in that for the most of the time viewers may not be facing the mast.’* (Section 4.3).
- In relation to smaller villages such as Liscannor section 4.3 of the Guidelines specifically states-
 - *‘Only as a last resort should free-standing masts be located within or in the immediate surrounds of smaller towns or villages. If such location should become necessary, sites already developed for utilities should be considered and masts 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.’*
- The sharing of installations and clustering of such facilities are encouraged as co-location will reduce the visual impact on the landscape (Section 4.5). Developers will have to demonstrate that they have made a reasonable effort to share the use of the same structure or building with competing operators

6.5. Circular Letter PL07/12 (October 2012)

This Circular Letter revises elements of the 1996 Guidelines including-

- attaching a condition to a permission for a telecommunication mast and antennae which limit their life to a set temporary period should cease, except in exceptional circumstances.
- planning authorities should also cease specifying separation distance for such developments when making Development Plans as they can inadvertently have a major impact on the roll-out of viable and effective telecommunications network.
- planning authorities should be primarily concerned with the appropriate location and design of telecommunication structures and do not have the

competence for health and safety matters in respect of telecommunication infrastructure. These are regulated by other codes and such matters should not be additionally regulated in the planning process.

- Development Contribution Schemes must include waivers for broadband infrastructure and these waivers are intended to be applied consistently across all local authority areas.

6.6. Clare County Development Plan 2017-2023

6.6.1. The site is governed by the policies and provisions contained in the Clare County Development Plan 2017 to 2023. Liscannor is identified as a Small Village in Table 2.1- Settlement Hierarchy.

6.6.2. The following objectives are relevant-

- CDP8.43 Development Plan Objective: Broadband Connectivity. It is an objective of Clare County Council:
 - a. *To work with the Department of Communications, Climate Change and Natural Resources to ensure the prompt implementation of the Rural Broadband Scheme in County Clare;*
 - b. *To facilitate the delivery of high capacity ICT infrastructure throughout the County.*
- CDP8.44 Telecommunications Infrastructure, It is an objective of the Development Plan:
 - ‘To facilitate the provision of telecommunications services at appropriate locations within the County having regard to the DoEHLG ‘Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities 1996 (as updated by PL07/12 of 2012)’.*
- CDP10.6 Broadband
 - It is an objective of the Development Plan: To advocate for, and facilitate the extension of, broadband infrastructure throughout the County and encourage e-commerce and IT telecommunications in support of rural enterprise.*

6.6.3. Map 13A: Landscape Designations- The site is located in a ‘Settled Landscape’.

- CDP13.2 Development Plan Objective: Settled Landscapes. It is an objective of the Development Plan:

To permit development in areas designated as ‘settled landscapes’ that sustain and enhance quality of life and residential amenity and promote economic activity subject to:

- *Conformity with all other relevant provisions of the Plan and the availability and protection of resources;*
- *Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts;*
- *Regard being given to avoiding intrusions on scenic routes and on ridges or shorelines.*

Developments in these areas will be required to demonstrate:

- *That the site has been selected to avoid visually prominent locations;*
- *That the site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads;*
- *That design for buildings and structures reduce visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.*

6.6.4. Scenic Routes- CDP13.7-

Development Plan Objective: Scenic Routes

It is an objective of Clare County Council:

- To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;*
- To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact;*

- c. *To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.*

The R478 from Lahinch to south of Lisdoonvarna is identified as a scenic route in Map C Landscape Designation of the County Development Plan. This is also shown in map 13A of the Landscape Designations of the main Development Plan document. The application site is located c. 200 m north of the R478.

6.7. **Natural Heritage Designations**

There are no relevant designated areas within the immediate vicinity of the site. The site is located-

- c. 1.5km west of Inagh River Estuary SAC (000036)
- c. 5 km east of Cliffs of Moher SPA (004005)

6.8. **EIA Screening**

- 6.8.1. A telecommunications mast such as that proposed is not listed as requiring mandatory EIA as per Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended). By reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case (See Preliminary Examination EIAR Screening Form).

7.0 **The Appeal**

7.1. **Grounds of Appeal**

One third party appeals has been received from John D Flanagan who indicates he is the owner/occupier of the adjacent site. The grounds of appeal can be summarised as follows-

- The development would be in contravention of Article 191 of the Treaty of Functioning of the European Union/ EU Charter for orderly development

- The development would be an infringement on his constitutional rights
- He is entitled to appeal in the process of leave to appeal.

7.2. Applicant Response

The applicant's response to the grounds of appeal can be summarised as follows:

- The Appellant has not elaborated on any of the issues raised in the appeal.
- The Appellant refers to Article 191 of the Treaty of Functioning of the EU.
- Details submitted with the application and considered in the planners report address concerns relating to environmental impacts.
- The proposal is not considered to be in contravention of Article 191 of the Treaty of Functioning of the European Union nor will it infringe on EU (environmental) laws if constructed.
- The application was made and assessed in accordance with Planning and Development Act 2000 and the Regulations of 2001 as amended. The appellant has made a submission and has now appealed the decision.

7.3. Planning Authority Response

The Planning Authority's response to the grounds of appeal can be summarised as-

- The third party has not substantiated any of the grounds of appeal or elaborated on how they relate to the proper planning and sustainable development of the area.

7.4. Observations

- None

8.0 Assessment

8.1. Introduction

8.1.1. Having examined the application details and documentation on file including the third party appeal, having inspected the site and having had regard to all relevant local/regional/national policies and guidance, I consider that the substantive issues for this appeal are as follows:

- Article 191 of the Treaty of Functioning of the European Union/ EU Charter for orderly development
- Constitutional Rights/Applicants entitlement to appeal/leave to appeal
- Appropriate Assessment.

8.2. Article 191 of the Treaty of Functioning of the European Union/ EU Charter for orderly development

8.2.1. The Appellant considers the proposed development would be contrary to Article 191 of the Treaty of Functioning of the European Union/ EU Charter for orderly development.

8.2.2. I have considered Article 191 as set out in section 6.1 above. This ground of appeal seems to relate to application of EU Environmental Policy at a very high and general level. It is not clear from the appeal how the proposed development would contravene Article 191.

8.2.3. As detailed in section 6.8.1 the proposed development by reason of its nature, scale and location at this site, would not be likely to have significant effects on the environment. Appropriate Assessment considerations and impacts to designated European Sites are set out in section 8.4 below.

8.2.4. I have not been able to identify what exactly the Appellant refers to when he states- 'EU Charter for orderly development'.

8.2.5. In this context, I am satisfied the development as proposed would not be contrary to Article 191 of the Treaty of Functioning of the European Union or the EU Charter for orderly development.

8.2.6. Section 138 of the Planning and Development Acts (as amended) sets out scenarios where the Board may dismiss appeals. The Board may wish to give consideration to this provision of the legislation.

8.3. Constitutional Rights/Applicants entitlement to appeal/leave to appeal

8.3.1. The Appellant's second and third grounds of appeal details the development if permitted would infringe on his constitutional rights and that, as the landowner of the adjoining lands he is entitled to appeal in the process of leave to appeal.

8.3.2. The Appellant has made a submission to the council and has lodged a third party appeal to the Board. There is no indication he applied for 'leave to appeal' as per section 37 (6) of the Act, nor is there any obvious requirement for him to do so given that he has appropriately appealed the decision under section 37 (1).

8.3.3. I see no reason why or how the development if permitted, would infringe upon the Appellants constitutional rights or his rights to appeal under the provisions of the Act.

8.4. Appropriate Assessment

8.4.1. Having regard to the nature of the proposed development and its operational use and its separation distance to any European site, it is considered that no Appropriate Assessment issues arise and the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any designated European site.

9.0 Recommendation

9.1. I recommend that permission is granted subject to the following conditions-

10.0 Reasons and Considerations

10.1. Having regard to the provisions of the National Planning Framework (2018), the Regional Spatial & Economic Strategy for the Southern Region (2020), the Clare County Development Plan (2017-2023) as varied, the Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, (1996) and associated Circular Letter PL07/12, the existing mast structure on the site adjoining

lands zoned for 'Utilities' and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not be likely to have significant effects on the environment or designated European Sites, and would not seriously injure residential or visual amenities of the area including views from the designated Scenic Route along the R478. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 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 14th day of February, 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Prior to commencement of development, 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.

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

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

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

4. Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.

Reason: In the interest of public health.

5. (a) In the event of the proposed structure becoming obsolete and being decommissioned, the developers shall, at their own expense, remove the mast, antenna and ancillary structures and equipment.

(b) The site shall be reinstated upon the removal of the telecommunication structure and ancillary structures. Details of the reinstatement shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of orderly development.

6. The developer shall provide and make available at reasonable terms the proposed support structure for the provision of mobile telecommunications antenna of third party licenced telecommunications operators.

Reason: To avoid a multiplicity of telecommunications structures in the area, in the interest of visual amenity, and proper planning and sustainable development.

7. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

Adrian Ormsby
Planning Inspector

15th of February 2023