



An
Bord
Pleanála

Inspector's Report

ABP-313878-22

Development	18 Metre monopole telecommunications support structure with ancillary equipment and associated site works.
Location	Clonmel Town F.C, Cashel Road, Clonmel, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	22288
Applicant(s)	Shared Access Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party Appeal
Appellant(s)	Shared Access Ltd.
Observer(s)	Dominic Hanley Eoin Fitzgerald & Aoife Moroney Employees of Sonas Melview Nursing Home Residents of Baron Park Kiva Barry

Date of Site Inspection

8th of June 2023

Inspector

Angela Brereton

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1.0 Site Location and Description

- 1.1. The site is located on the grounds of Clonmel Town F.C Cashel Road, Clonmel. The mast is proposed to be located to the south of the club house and is within the sports complex. There is a full-sized soccer pitch in place encircled by a running track.
- 1.2. The site is accessed from the R-688 (Cashel Road) to the west of the complex. The access to the sports grounds is from this road and there is an existing c. 1.8m high boundary wall running the length of the roadside boundary. There is a band of mature evergreen trees located on the eastern site boundary.
- 1.3. The site is located in an urban area within the boundaries of Clonmel. There are residential estates to the north, east and west. To the immediate north is Clonmel Bridge club with residential development further north and on the opposite side of the road including Baron Park. To the south is a nursing home, which is listed on the Record of Protected Structures. This is on a more elevated site and the mast is to be located c.140m north of the curtilage of the protected structure.

2.0 Proposed Development

- 2.1. This is to provide for the development of an 18m monopole to support telecommunications antenna and ancillary equipment cabinets, fencing and all associated site works for use by Three Ireland.
- 2.2. A Planning Statement has been submitted by Pegasus Group in support of the application.

3.0 Planning Authority Decision

3.1. Decision

On the 2nd of June 2022 Tipperary County Council refused permission for the proposed development for the following reason:

Policy INF 11 (Telecommunications) of the Clonmel and Environs Plan 2013, as varied, states that the Council will facilitate proposals for telecommunications masts, antennae and ancillary equipment where it can be established that the

maximum telecommunication coverage is achieved with the minimal impact on the surrounding area save in the following locations:

- (i) At locations detrimental to views, prospects or vistas,
- (ii) Within significant views of National Monuments or Protected Structures
- (iii) In close proximity to schools, churches, community buildings, other public and amenity/conservation areas and residential areas.

The application site is located in close proximity to a nursing home (Protected Structure) childcare facility and private residential properties.

The proposed development would, therefore, contravene Policy INF 11 (Telecommunications) of the Clonmel and Environs Development Plan 2013, as varied, and would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planner's Report

The Planner had regard to the locational context of the site, planning history and policy, and to the submissions and petitions made. Their assessment includes the following:

- They had regard to policies in the Clonmel and Environs Development Plan 2013, and to National Guidance and Circular Letter: PL07/12 regarding Telecommunications Masts. They note that these are generally supportive to providing modern telecommunications infrastructure at appropriate locations.
- They note that multiple submissions are concerned about public health. The planning authority is concerned about the appropriate location and design of the telecommunications structure. They do not have the competence for health and safety matters in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process.

- They note that permission has previously been refused on the subject site for a 21m high mast under Reg.Ref. 21/1410 for 2no. reasons and provide details. The current proposal reduces the height by 3m.
- When considering the appropriateness of a site for a telecommunications mast, there are two critical considerations, the technical justification for same and the visual impact.
- They have regard to details submitted on deficiency on coverage in the area and note that there are 3 existing masts within 1.2 kms of the site. They note that as provided there are technical difficulties with these masts.
- In the previous refusal the Planning Authority determined that the location of the mast at this point would conflict with the provisions of INF 11, given the proximity to these sensitive land uses including the protected structure. They are concerned that the mast will appear visually overbearing for the residential amenity of these properties. That the proposal conflicts with the stated objective of the Clonmel and Environs Town Development Plan 2013.
- They have included a Habitats Directive Assessment Screening Report which provides that there will be no significant effects on Natura 2000 sites and that an AA is not required.
- They note that Section 10 of the Tipperary Development Contributions Scheme 2020 states that 100% reduction in contribution applies to telecommunications infrastructure.

3.3. **Other Technical Reports**

None noted on file.

3.4. **Prescribed Bodies**

No observations noted on file.

3.5. Third Party Observations

There are several submissions and petitions from local residents. Also, submissions from the employees of the nursing home and public representations have been received. In summary their concerns include the following:

- Proximity to residential, to a childcare facility, nursing home, sports grounds and park. There are health and safety concerns. They note that the World Health Organisation has raised several concerns including about this new technology 5G.
- The locational context would not conform with the Telecommunications Guidelines or Circular Letter P/0712. Guidance needs to be updated.
- It would be contrary to Planning Policy and reference is had to Policy INF11 (Telecommunications) of the Clonmel & Environs DP 2013 as varied.
- Proliferation of telecommunications masts in the area. Alternative locations should be considered eg. Business/industrial park.
- Unsightly and overbearing - would detract from the visual amenity and devalue houses in the area.
- Will be highly obtrusive and cause distraction – public safety/traffic hazard.
- Adverse impact on proximate Melview Nursing Home which is a Protected Structure.
- Previous refusal for mast at proposed location – Reg.Ref. 21/1410 refers. They note other permissions for masts in the Clonmel area.
- Fire Safety issues- proximity of the mast to the clubhouse and carpark.
- A letter of consent from the legal owner of the land has not been submitted.
- They consider that the proposal should be refused.

4.0 Planning History

The Planner's Report has regard to considerable planning history in the area. The following is the most relevant to the mast and the subject site:

Subject site

- Reg.Ref.21/1410 – Permission refused for a 21.1m monopole to support telecommunications antenna and ancillary equipment, cabinets, fencing and all associated site works for use by Three Ireland (Hutchinson) Ltd and other operators at Clonmel Town F.C.

This was refused for 2no. reasons, i.e. in summary –

1. Would be contrary to Policy INF 11 (Telecommunications) of the Clonmel and Environs Development Plan 2013, as varied.
2. Would be contrary to the Telecommunications Guidelines 1996.

It is considered that the proposed development would lead to a proliferation of telecommunications structures where an opportunity for co-location exists in the immediate area on permitted masts and would seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

This proposal was in a similar location to that shown in the current application. A copy of this decision is included in the History Appendix to this Report.

Melview Nursing Home – P.S.

This extension to this Protected Structure was referred to by the Appellant and is c.140m to the south of the subject site:

- Reg.Ref. 15600952 - Permission granted by the Council for a 64 bedroom 3 storey extension with ground, first and second floor link to existing Melview Nursing Home. This includes for alterations and ancillary site works to include new access and working area.

5.0 Policy Context

5.1. National Planning Framework – Project Ireland 2040

This is broadly supportive of the national rollout of broadband communications.

National Policy 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.

5.2. Regional, Spatial and Economic Strategy for the Southern Region

The RESES seeks to improve high-quality telecommunications infrastructure across the region. Policies are broadly supportive and support the roll out of mobile and broadband infrastructure and include:

RPO137: 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.

5.3. National Broadband Plan 2020:

The National Broadband Plan (NBP) is the Government's initiative to improve digital connectivity by delivering high speed broadband services to all premises in Ireland, through investment by commercial enterprises coupled with intervention by the State in those parts of the country where private companies have no plans to invest.

5.4. Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, 1996

These Guidelines set out the criteria for the assessment of telecommunications structures. The relevant points include the following:

Section 4.3 of the Guidelines refers to visual impact and states that only as a last resort should free-standing masts be located within or in the immediate surrounds of smaller towns or villages. If such locations 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 Guidelines also state that visual impact is among the more important considerations which should be considered in arriving at a decision for a particular application. In most cases, the Applicant will only have limited flexibility as regards location, given the constraints

arising from radio planning parameters, etc. Visual impact will, by definition, vary with the general context of the proposed development.

The Guidelines state that the approach will vary depending on whether a proposed development is in:

- a rural/agricultural area;
- an upland/hilly, mountainous area;
- a smaller settlement/village;
- an industrial area/industrially zoned land; or
- a suburban area of a larger town or city.
- The sharing of installations and clustering of antennae is encouraged as co-location will reduce the visual impact on the landscape (Section 4.5).

Circular Letter PL07/12 This Circular Letter revised the Telecommunication Antenna and Support Structures Guidelines, 1996. (October 2012)

The circular advises that Planning Authorities should cease attaching time limit conditions to telecommunications masts, except in exceptional circumstances. It advises Planning Authorities to:

- Cease attaching time limiting conditions or issuing temporary durations to telecommunications masts, except in exceptional circumstances.
- Avoid including minimum separation distances between masts or schools and houses in Development Plans.
- Omit conditions on planning permissions requiring security in the form of a bond/cash deposit.
- Not include monitoring arrangements on health and safety or to determine planning applications on health grounds.
- Include waivers on future development contribution schemes for the provision of broadband infrastructure.

Circular PL03/2018 - Revisions to Development Contributions Guidelines in respect of Telecommunications Infrastructure

This includes a requirement that Local Authority Development Contribution Schemes include waivers and reductions for broadband infrastructure (masts and antennae). The waiver applies to any telecommunications infrastructure both mobile and broadband. This includes masts, antennae, dishes and other apparatus or equipment being installed for such communications purposes.

5.5. Tipperary County Council Development Plan 2022-2028

Core Strategy

Section 4.2.1 notes that the settlement strategy for County Tipperary. They note that as stated in the Core Strategy, the current Town Development Plans and LAPs will remain applicable until they are replaced, (noting that the lifetimes of each have been extended in accordance with Section 11(A) of the Planning Act), with LAPs, in accordance with the framework and timeline as set out in Table 4.2.

This notes that Clonmel and Environs Development Plan 2013 (as extended) is a Key Town (Self-Sustaining Regional Driver) and that LAP preparation on the new plans commenced in 2022.

Section 4.3 notes that Clonmel is one of six Key Towns in the region. Key Towns are strategically located with important roles in delivering social and transport infrastructure, employment and economic prosperity (as indicated on Figure 2.3 Regional Core Strategy Vision). These are defined as a large population scale urban centre, functioning as a self-sustaining regional economic driver.

Section 4.3.1 notes that Clonmel is the largest town in Co. Tipperary, is addressed in Section 3.5 of the RSES, and the town boundary and compact growth area is set out in its Town Profile Plan (Figure 4.2).

The strategy includes that Clonmel is designated as a self-sustaining regional growth centre in the Southern RSES and is a strategic employment location providing regional level services in the county. In addition, it notes: *The Clonmel Town and Environs Development Plan 2013 will remain applicable to its Plan area, until a detailed assessment and review of land zoning for residential development will be carried out in line with the NPF 'Methodology for a Tiered Approach to Land-zoning' to inform the preparation of a new Clonmel and Environs LAP.*

Telecommunications

Section 6.8 refers to Digital Connectivity and Innovation. This includes:

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 Telecommunications Antennae and Support Structure: Guidelines for Planning Authorities, DEHLG, 1996 (and any review thereof) and will seek to work proactively with the telecommunication industry during the development and deployment phase.

Planning Policy 6.10 includes Policy 6-6 i.e.:

Facilitate the sustainable development of telecommunications and digital connectivity infrastructure in line with Harnessing Digital, The Digital Ireland Framework (GoH, 2022) and in accordance with Telecommunications Antennae and Support Structure: Guidelines for Planning Authorities, (DEHLG, 1996), where it can be established that there will be no significant adverse impact on the surrounding areas and the receiving environment.

Volume 3 – Development Management Standards – Appendix 6

Section 5 refers to Commercial & Employment Development.

Section 5.6 to Satellite Dishes & Telecommunications Apparatus. This includes:

Satellite dishes and telecommunications apparatus can affect the character and appearance of historic buildings and important townscapes. Satellite dishes are not normally acceptable on a Protected Structure, on the front of structures within PRAs or town centre areas or the front or side of a building within an ACA save for exceptional circumstances.

Appendix 1 includes reference to the Telecommunications Antennae and Supporting Structures, Guidelines for Planning Authorities, (DELG, 1996).

Volume 4 – Built Heritage

This contains the Record of Protected Structures and Architectural Conservation Areas.

5.6. Clonmel and Environs Development Plan 2013, as varied

A new Local Area Plan for Clonmel is currently being prepared by Tipperary County Council which will set out the land use strategy for the town and when adopted will replace the current Clonmel and Environs Development Plan 2013.

Volume 1

Section 5.8 refers to Telecommunications and provides:

The Council recognises the importance of a high quality telecommunications service for the economic and social development of Clonmel and the Council will seek to achieve a balance between facilitating the provision of mobile telecommunications services in the interests of social and economic progress and sustaining residential amenities and environmental quality.

Policy INF 11: *The Council will facilitate proposals for telecommunications masts, antennae and ancillary equipment where it can be established that the maximum telecommunication coverage is achieved with the minimal impact on the surrounding area save in the following locations;*

- (i) At locations detrimental to views, prospects or vistas,*
- (ii) Within significant views of national monuments or protected structures,*
- (iii) In close proximity to schools, churches, crèches, community buildings, other public and amenity/conservation areas and residential areas.*

Section 9.29 – Telecommunications

In the consideration of proposals for telecommunications masts, antennae and ancillary equipment the Council will have regard to the following:

- The visual impact of the proposed equipment on the natural or built environment, particularly in areas of sensitive landscape or historic importance;*
- The potential for co-location of equipment on existing masts;*
- The road networks traversing the plan area and plans for the development of these networks, including any future by-passes, and*

- *Department of the Environment and Local Government “Telecommunications Antennae and Support Structures Guidelines for Planning Authorities” (July 1996), or any amendments thereto.*

Proposals for new telecommunications infrastructure must demonstrate that they have considered alternative sites, impact on public health and the long term plans of the developer in the County and wider area and the plans of other promoters.

Land Use Zoning

As shown on the Land Use Zoning Map (Appendix 5) the site is within the ‘09 – Amenity’ zoning.

It is surrounded by the ‘01 – Residential’ zoning.

Appendix 2 – Record of Protected Structures

Ref no.121 - NIAH Ref -22113011 – Melview Upper, Gladstone Street: - *Detached five bay two and three store house c.1835 on an irregular plan comprising three storey main block projecting porch to entre and two bay two storey recessed end bay. In use as a nursing home.*

5.7. Natural Heritage Designations

The site is located c.1km north of the Lower River Suir SAC.

5.8. EIA Screening

The proposed development does not fall within the scope of any of the Classes of development for the purposes of EIA.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal on behalf of the First Party, Shared Access Ltd. has been submitted by Pegasus Group. This has regard to locational context, planning history and policy. Their Grounds of Appeal include the following:

- The appeal scheme is vital to the technical requirement on behalf of the proposed operator to both maintain and improve existing network coverage for a range of telecommunications technologies within Clonmel.
- That the proposal will result in achieving maximum amount of coverage with minimal impact on the surrounding area;
- That the proposal is not located in a location that is detrimental to views, prospects or vistas;
- That the proposal is not within and will not affect any significant view of a National Monument or Protected Structure;
- There is a specific technical requirement for the location of the mast to be situated within the built-up area of Clonmel;
- There are no other alternative options available to host the telecommunications equipment, thereby justifying the proposed location within the general vicinity of a nursing home and nursery: and
- The proposal has been sited and designed to meet certain design parameters whilst delivering telecommunications coverage.

Matters that are thought not to be in dispute

- Technical Justification.
- The Benefits of the proposal and details are given of Economic Benefits, Social Benefits and Environmental Benefits.

Siting and Design

- The Design of the Proposal has not been objected to. They note the height has been reduced from 21.1m (previous application refused on this site 21/1410) to 18m (current application).
- Details are given of the proposed siting, noting that it is not in an ACA, and is not proximate to a protected structure (noting the nearest is c.150m to the south). That the trees along the southern boundary of Clonmel Town FC that form the boundary with the nursing home and that this is on a more elevated site. They note residential in the area and that there is a creche c.50m from the site along the R688.

- A description is given, of the workings of the appeal scheme. The RF Technical Justification Report is provided in Appendix 3.
- The appellant has demonstrated through detailed investigation the alternative locations for a telecommunications installation and why they were discounted.
- The site is considered to be the only appropriate location to site an installation that will provide the required coverage in the cell area.
- Due to the decommissioning of two sites within Clonmel Three Ireland (Hutchison) that there is no longer sufficient urban coverage in the area.
- Clonmel is designated as a key County Town and the provider has identified the need to provide an uplift in both the quality and capacity of coverage to the Clonmel area.
- This will also allow for a capital contribution to be made to the site provider, Clonmel Football Club, thereby resulting in a direct social benefit of the scheme as well as the economic benefits associated with improvements to the communications network.
- Although the proposed development will only be occupied by Three at first, the applicant is fully amenable to other operators joining the mast in due course and the design of the mast has been future proofed to ensure this possible eventuality.
- The proposal will meet the international Commission guidelines for public exposure. Appendix 4 – ICNIRP Certification.

Case for the Applicant

Details are given under each of the aforementioned headings. In Summary this includes the following:

- The proposal seeks to maximise coverage delivery in a form that has the maximum impact and is acceptable in town planning terms.
- They submit that the appellant has carefully considered all other options and the appeal site and design is considered to be the best option in terms of providing the maximum level of coverage whilst resulting in the minimum impact to the surrounding area.

- The location of the site is considered to be the most suitable available in the cell area in terms of minimising visual impact, with a limited degree of environmental change. Appendix 5 - Computer Generated Images.
- They note that extensions have been granted to the nursing home P.S. and consider that the character has been changed whereby the setting of the P.S has been compromised by the extension. (Reg.Ref.15600952 refers).
- The appeal scheme will have no visual impact on the localised view of the front of the building with the extension sitting to the rear and between the PS and the proposed installation. They also refer to the impact of floodlights in the sports field.

Alternatives

- There are no alternative options available to host telecommunications equipment or for sharing.
- Due to the lack of suitable structures available to provide coverage, Three Ireland (Hutchison) have identified and designed a solution that meets the coverage and capacity requirement for the network as well as minimising the visual impact of the area.
- They note that a number of sites were considered and discounted as alternatives and Table 1 in Section 5.21 of their Appeal Statement provides details of these.
- The applicant has demonstrated through a detailed investigation the alternative locations for a telecommunications mast and why they were discounted.
- The mast is capable of providing significant improvements in communications coverage in the wider surrounds.
- The context of the cell area is built up and predominantly residential, resulting in a highly constrained cell area in terms of visual impact.

Conclusions

This provides a reiteration of the points already made to justify and support the proposed location and need for the proposed telecommunications structure. This

includes regard to social and economic benefits. It submits that the mast is not unduly prominent and that the height has been reduced to as much as technically viable. A number of Appendices are included in support of their case.

It concludes that with regard to the reasons stated and the Statement of Case and supporting evidence that this appeal proposal is an acceptable development solution to deliver the much needed technical coverage requirements through a new sensitively designed mast in this location, providing the latest 4G and 5G service provision. They request that this appeal be allowed.

6.2. Planning Authority Response

There is no response from the Planning Authority to the Grounds of Appeal noted on file.

Observations

Observations have been submitted from the following:

- Dominic Hanley
- Eoin Fitzgerald & Aoife Moroney
- Michael Dalton on behalf of the Employees of Sonas Melview Nursing Home
- Aisling Kearns on behalf of the Residents of Baron Park
- Kiva Barry

These all express their concerns about the proposed development and for convenience the issues raised are summarised together under the headings below:

Ownership issues

- Reference is had to the history of Clonmel Town FC noting that it was established in 1963 and moved to Cashel Road and acquired a 99 year lease on the Doctor Pat O'Callaghan Sports Complex in 1993.
- Clonmel Town Football Club Limited c/o John Fahey is the leaseholder.
- The chairman of Clonmel Town FC as land owner is incorrect information.

- They refer to the planning application and provide that the legal owner did not sign a letter of consent with this application. They refer to and provide details of planning history relative to the legal ownership issue.
- This is contrary to Article 22(2)(g) of the Planning and Development Regulations as amended which stipulates that where the applicant is not the legal owner of the land or structure, the application must be accompanied by the written consent of the owner.
- They refer to Section 5.13 of the Development Management Guidelines 2007 which includes that where an applicant is not the owner and does not submit such a letter of consent, the application must be invalidated.
- They also note that no further information was requested.
- They query as to whom this new commercial development belongs.
- They note that the planning application for lands at Clonmel Fire Station Ref. 19600785 has consent. Reference is had to other planning history which they consider relevant regarding ownership issues.

Other Legislation

- They refer to different ACTS, protocol, NS delegation of Functions by the Chief Executive.
- Reference is had to the Fire Sections Act 1981 and this notes that all personal at the Fire Station are employees of the Fire Authority/Tipperary Local Authority.
- Also, to the Local Government Act, 2001, Delegation of Functions. The latter contains delegation of functions to the Chief Executive.

Locational Context

- The application site is located in the heart of the community, in close proximity to a Nursing Home (Protected Structure), Childcare Facility and Private Residential Properties.
- The proposed location for the monopole and antennae on the grounds of a sports pitch and a clubhouse is where many children will be playing.

- They note the locational context of the clubhouse and a temporary use to house refugees.
- The residential area surrounding the proposed location with some dwelling houses within 75m. This will cause devaluation of properties in the area.
- They note the proximity of Baron Park amenity area, a creche and the nursing home.
- Existing telecommunications on the Heywood Road and on Clonmel Celtic FC grounds already supply the area with adequate internet coverage.

Impact on the Character and Amenities of the Area

- They consider that the proposed development would present a very dominant and overbearing feature in this setting and will devalue property in the vicinity.
- They refer to the applicant's Appendix 5 – Computer Generated Images provided with the appeal and consider that they do not provide an accurate representation of the height and width of the proposed mast.
- Photographs showing the site context, including views from the more elevated Nursing Home site to the south, Cashel Road and Baron Park have been submitted.
- That it will take up parking spaces used by the Clubhouse and persons using the sports grounds.

Planning Policy issues

- The proposal would contravene Policy INF11 (telecommunications) of the Clonmel and Environs DP 2013.
- The proposal would not comply with the National Guidelines – 'Telecommunication Antennas and Supports structures – Guidelines for Planning Authorities' 1996.
- Melview Nursing Home is listed both of the Record of Protected Structures as set out in the Clonmel and Environs and Development plan 2013 (Ref.no.121) and the NIAH (Ref.22113011). The proposed siting of the mast is within 140m of this P.S.

Planning History

- Reference is had to the previous Council refusal for the erection of a 21m mast on the subject site – Reg.Ref.21/1410 refers.
- To the planning histories for the existing and permitted masts in Clonmel.
- The application site is located approx. 500m from a new existing mast (Clonmel Celtic Football Club PP Ref 19600918 – 21m monopole) and approx.440m from a permitted mast at Clonmel Rugby Club (PL1760004 - 18m). They also refer to a mast granted at Clonmel Fire Station (PL19600785 – 24m monopole).
- They refer to Reg. Ref 19600918 and note that this site was never decommissioned and is still in full operational mode.
- The operator at the Fire Station has withdrawn the site and the opportunity to co-locate no longer exists. There is no evidence submitted to show this site had been withdrawn.
- Justification was to replace Clonmel North site at the Cashel Road Business Park and this site was decommissioned and details are provided of this.

Alternatives

- They reference other masts that have been granted permission in the Clonmel Environs and consider their relevance to the Council's decision on the subject site. They submit that alternative sites do not appear to be addressed.
- There is no new requirement in the area for the subject proposal, there is good mobile and internet coverage in the area provided by a new mast at Clonmel Celtic football and the new mast at Clonmel Rugby Club.
- They do not consider that the applicants have submitted sufficient evidence to warrant granting an additional free standing structure within the amenity grounds of an urban setting, in close proximity to a Nursing Home PS, Childcare facility, Community Building and Residential Areas to replace Clonmel Chilling Site which is 1.3km from Clonmel Town FC.
- The ground height is too low to enable any mast situated on this site the ability to achieve line of sight to provide the most effective coverage.

- Any lack of coverage in the surrounds could be met by co-location Celtic FC PL Ref 19600918 or on the permitted site at the Fire Station.
- Reference is had to Table 1 of the Appeal Statement and to Table 1 Discounted Sites. They query Greenfield sites considered and discounted. They query the reasons to discount and submit that there are issues with the sites referred to in this Table.
- They provide that a number of sites were not considered by Shared Access Ltd in close proximity to Clonmel Town FC and Fire Station Heywood Road. They provide a list of such and include photos in their appendices.
- They claim that Shared Access Ltd has not substantiated or validated claims that they contacted any of these site providers by letter/e-mail or phone including direct contact.
- They consider that Appendix 3 of the Planning Statement 'Shared Access Ltd Letter to Chief Planning Officer Tipperary CoCo' prepared for the Clonmel Town FC throws up a number of coverage questions and contradictions and provide details of such.
- They are concerned that the applicants have not been transparent relative to the acquisition of the site at Clonmel Town FC.

Health issues

- There is no substantial evidence submitted of compliance from existing 5G audited masts from the independent board of Commission for Communication Regulation.
- There is no guaranteed in writing that there are no current or potential health effects caused by cell towers radiation.
- They refer to the EU directive issued in 2004 in respect of magnetic ray's resonance, and to lack of information available on the impact on public health.
- Appendix 3 does not mention or have consideration for residents at night time when there are no pedestrian or pedestrian movements.
- It has not been proven that there are no health issues arising.

Conclusion

- They consider that the proposed development would lead to a proliferation of telecommunication structures where an opportunity for co-location exists in the immediate area on permitted masts and would seriously injure the visual amenities of the area. The proposed mast would therefore be contrary to the proper planning and development of the area.

7.0 Assessment

7.1.1. This is a First Party Appeal against the Council's decision to refuse permission for the proposed development. Having regard to the documentation submitted, to planning history and policy, the issues raised in the First Party Grounds of Appeal, the Observations and Submissions made and to my site visit, I would consider that the issues primarily centre on:

- Policy Considerations
- Land Ownership and Procedural Issues
- Justification for the Proposed Development
- Consideration of Alternatives and Co-Location
- Site Context and Design
- Impact on the Visual Amenity and Character of the Area
- Health and Safety
- Appropriate Assessment

7.2. Policy Considerations

7.2.1. The 'Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities' (DOE, 1996) state that it is national policy to develop a comprehensive mobile telecommunications service within Ireland in order to promote industrial and commercial development, to improve personal and household security, and to enhance social exchange and mobility. Such proposals are considered in light of this guidance in addition to revisions provided in Circular PL07/12.

- 7.2.2. This strategic policy is reiterated in the National Planning Framework: Project Ireland 2040. National Policy Objective 24 seeks to support and facilitate broadband including for those who live and work in rural areas and NPO48 which aims to develop stable, innovative and secure digital communications and services infrastructure on an all-island basis. The National Broadband Plan also aims to deliver a high-speed broadband network throughout Ireland.
- 7.2.3. The Tipperary County Development Plan 2021-2027 includes Section 6.8 relative to Digital Connectivity and Innovation and Planning Policy 6.6 is of particular relevance to Telecommunications. Section 4.3.1 relates to the Clonmel Strategy for Growth and includes that a new Clonmel Local Area Plan is currently under preparation, but not yet finalised or adopted. Therefore, the Clonmel and Environs Development Plan 2013 (as varied) is still the relevant plan. It is noted that the subject of the current application was considered by the Council under the Clonmel and Environs Development Plan 2013. The Policies of this plan relevant to Telecommunications, in particular Policy INF11, has been referred to in the Council's reasons for refusal, and have been noted in the Policy Section above.
- 7.2.4. While such ICT infrastructure is generally supported, this needs to be balanced against the need to safeguard the rural and urban environment. Therefore, in dealing with applications for such development it is essential that care and consideration be afforded to siting and design. This includes regard to site selection, justification and need for the proposed development and to environmental considerations, to design issues, visual and residential impact, access roads, possibilities for sharing facilities and clustering.
- 7.2.5. Reference is had to the documentation submitted to the justification and merits of the proposed development and to consideration of co-location and alternatives. The Council's concerns as outlined in their reasons for refusal, are noted as are the details submitted in the First Party Appeal and the issues raised by the Observations. It needs to be ascertained as to whether this proposal can be considered to comply with planning policies and guidelines and as to whether the Council's reason for refusal can be overcome and the proposed development would be considered to be in accordance with the proper planning and sustainable development of the area. These issues are considered further in this Assessment below.

7.3. Land Ownership and Procedural issues

- 7.3.1. There is concern raised in the Observations, that proof of ownership has not been established in the documentation submitted with this planning application including a copy of lease agreement and conditions allowing the Clonmel Town FC Committee or its Limited Company to proceed in subletting any part of the grounds for a commercial venture. That while a letter from the leasehold owner has been submitted, the legal owner did not sign the letter of consent. It is noted that the First Party have not addressed this issue.
- 7.3.2. Reference is had to Article 22 (2)(g) of the Planning and Development Regulations 2001 (as amended). That this provides that where the applicant is not the legal owner of the land or structure that the application must be accompanied by the written consent of the owner. This application was accepted as valid and this is within the remit of the Council, and it is noted that they have accepted and processed this application having regard to the documentation submitted.
- 7.3.3. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*" In other words, the developer must be certain under civil law that he/she has all the rights in the land to execute the grant of permission.

7.4. Justification for Proposed Development

- 7.4.1. The documentation submitted with the application by Shared Access Limited is accompanied by a 'RF Technical Justification Report' prepared by a Three Radio Engineer. The report sets down the context, requirements and technical considerations in terms of network coverage to justify the need for the proposed development. It is submitted that when taken in isolation or together, the coverage maps (along with the capacity improvements to 3G, 4G, 5G) demonstrate a need for

improved network coverage within the vicinity of the application site. That the proposal is a key part of the Three's overall plans for the County providing coverage to both existing and proposed areas of Clonmel. That the site at Clonmel Town FC will provide coverage and capacity to meet the high demand for wireless services in the area. Therefore, allowing Three Ireland to continue to supply high quality network coverage and capacity in the area.

- 7.4.2. That the proposed installation will form part of an established telecommunications network system that Three operates in this area and has been carefully chosen to ensure performance levels are increased above that offered following the decommissioning of Clonmel North 3G. That this site is considered the best possible solution to meet both the existing and future demands of customers in this area. The Technical Justification provides that failure to progress this installation in the planned location, as can be seen in the plots provided, has a negative impact on Three's network. This would leave customers in this area of the town with reduced voice and data mobile service.
- 7.4.3. They provide that once developed, Shared Access Limited will manage the site ensuring maintenance, health and safety and site access are kept to the highest standards and within agreements with the site provider/landlord. A letter has been submitted that provides that Clonmel Town FC is the leasehold owner of the lands indicated and is agreeable for Shared Access Limited to develop a telecommunications structure and compound on their lands.
- 7.4.4. Details submitted with the application note that the site presents an opportunity to improve the existing telecommunications coverage network in the area, whilst allowing for a capital contribution to be made to the site provider, Clonmel Town F.C. and that this will result in a direct social benefit to the scheme as well as economic benefits associated with improvements to the communications network.

7.5. **Consideration of Alternatives and Co-Location**

- 7.5.1. Concerns have been raised in the Observations made about the suitability of the subject site and that there has been a lack of investigation of alternatives. That this proposal will add to the proliferation of masts in the Clonmel area. It is submitted that the justification for the location of the development needs to be considered in the

context that there is a permitted installation Clonmel Celtic F.C (Reg.Ref. 19600918) within c.520m of the site that will provide improved coverage to the area and can facilitate co-location. Also, telecommunication installations located on elevated grounds north of the site at the Clonmel Rugby Club (Reg.Ref. 21/381 and Ref. 17600004). They submit that the details under Reg.Ref. 21/381 show that this installation would benefit the area where the proposed installation would be located. I note that this, assertion, has not been discussed in the documentation submitted with the subject application.

- 7.5.2. The First Party response submits that there are no alternative options available to host the telecommunications equipment thereby justifying the proposed location within the general vicinity of a nursing home and nursery. Paragraph 6.21 of the Planning Statement submitted with the application details the following Greenfield Sites within Clonmel that could be used as an alternative. These are: Clonmel Fire Station; Clonmel GAA, St. Oliver's Community Centre, Clonmel Community Centre, LIT Clonmel. Table 1 in Section 5.21 of their Appeal Statement, considers and provides reasons to discount these sites. They provide that the site in question is considered to be the only appropriate location to site an installation that will provide coverage in the cell area.
- 7.5.3. They note that due to the decommissioning of two sites in Clonmel, Three Ireland (Hutchison) no longer has sufficient urban coverage in the area. That this application came after permission was granted to Shared Access Limited in November 2019 for the erection of a 24m monopole to support telecommunications at Clonmel Fire Station under Reg.Ref. 19600785. That the site provider has since withdrawn their consent for this installation and consequently Shared Access Ltd, on behalf of Three Ireland (Hutchison) Ltd. has been forced to search for further sites since there is now no prospect of the permission at Clonmel Fire Station being implemented. Therefore, they provide that there is a gap in mobile network coverage that was thought to have been address and now requires alternative location. The subject site has been identified to fill this gap as a replacement for the Fire Station. There is a letter on file from Shared Access (dated 16th of July 2021) to confirm that this is a replacement site.
- 7.5.4. Furthermore, that the design of the proposal has been future proofed to enable the possible eventuality of other operators co-locating future equipment on the mast as

upgrades are required, therefore preventing any future proliferation of masts in the surrounding area. Although the proposed development will only be occupied by Three at first, the applicant is fully amenable to other operators joining the mast in due course and the design of the mast has been future proofed to ensure this is a possible eventuality.

- 7.5.5. I would note that having regard to the sites mentioned by the Observers, it appears that the alternative sites list discussed by the First Party is not exhaustive and that it has not been ascertained in the documentation submitted, that the proposed siting of this mast would be accordance with Section 5.8 and Policy INF11 of the Clonmel and Environs Development Plan 2013. Also, it is noted that the Observers are concerned that the erection of a 24m monopole to support telecommunications at Clonmel Fire Station under Reg.Ref. 19600785, could go ahead in addition to the proposed development. If the Board decides to permit it is recommended that a condition be included to provide for an 'either or scenario'. However, the enforceability of such a condition maybe in question.

7.6. **Site Context and Design**

- 7.6.1. The application site is a small area located in the car park to the south of Clonmel Town F.C clubhouse. The wider football club site is comprised of a football pitch, surrounding athletics track, MUGA with floodlights, sports hall building and surrounding land. It is provided that the mast will be seen in the context of this building, the sports ground and the floodlights in the area. It is to be set back c. 35m from the Cashel Road. Access to the site is to be via the existing access to the sports grounds.
- 7.6.2. The proposal is for the erection of an 18m free standing monopole. The documentation submitted provides that the monopole will support antennas for up to 3no. network operators thereby resulting in a shared structure. 12no. antennas, RRUs, transmission dishes and other ancillary equipment will be mounted on a headframe with cabinets at ground level to house the required telecommunications equipment. The mast will have a galvanised finish and cabinets are to be painted grey. The mast and cabinets are to be secured within a compound area which is to

feature ball netting. All equipment is to be situated within a secured compound area comprised of a 2.4m double mesh fence.

- 7.6.3. It is provided that as shown on the drawings submitted, the height of the mast at 18m is lower than (the 21m which was proposed in the previous application on this site which was refused by the Council – Reg.Ref.21/1410 refers), and lower than the proposal at Clonmel Fire Station (24sq.m). That this demonstrates that the providers only look to obtain permission for a height that is required.

7.7. Impact on the Character and Amenities of the area

- 7.7.1. The Observers consider that the proposed development would, due to its scale and height and the nature of the equipment which it would carry, be an obtrusive element in Clonmel Town Football Club and would impact on views from Melview Nursing Home Protected Structure, the creche on the opposite side of the Cashel Road and impact adversely on nearby residential. They consider that the monopole and antennas will have a negative visual impact in a large residential area with no other structures of similar height in proximity.
- 7.7.2. The existing nursing home, to the south, is a Protected Structure in the Clonmel Town and Environs Development Plan, RPS no. 21, NIAH No. 22113011. This is on a more elevated site and there will be views from the Nursing Home to the site of the proposed mast. The First Party refers to an extension granted to the Nursing Home as noted in the Planning History Section above. This modern extension is located to the rear of the nursing home. It is noted that the application site is not within the curtilage of a Protected Structure nor within an Architectural Conservation Area.
- 7.7.3. The Planner's Report refers to the proposal being contrary to telecommunications Policy INF of the Clonmel & Environs Town DP 2013. They note that the site is located on the grounds of an important amenity location. It is located c.140m north of the curtilage of a Protected Structure, and that there is residential development proximate to the site. This includes a creche 'Wonder Years Playschool' on the opposite side of the Cashel Road within 50m of the grounds. It is also noted that the proposed siting of the mast will be highly visible in this location.
- 7.7.4. While 'close proximity' is not defined, I note that the Council's sole reason for refusal relative to the current application, is based on being contrary to Telecommunications

Policy INF the said Plan. I would concur that location of the proposed development, taking account the proximity to and views from the Protected Structure, a childcare facility and nearby residential would not be in compliance with this policy. In this respect I would consider that it has not been demonstrated that this policy has been complied with, or that the Council's reason for refusal has been overcome.

7.8. Public Health

- 7.8.1. Having regard to concerns raised in the submissions and observations relative to proximity to residential and public health, I refer the Board to Circular Letter PL 07/12, issued by the Dept. of Environment, Community and Local Government on the 19th of October 2012 which states that:

'Planning Authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matters in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process.'

- 7.8.2. Therefore, having regard to the content of the Circular Letter, issues of public health in relation to the telecommunications structure are not a matter for the planning authority and there are no safety concerns outlined in relation to construction of the development. It is of note that the operator's compliance with general public exposure limits will be covered by the terms of the operator's licence. Appendix 4 of their Appeal Statement includes an ICNIRP Certification Statement.
- 7.8.3. Safety during construction was also referenced. However, the development would be a standard construction project and any issues could be addressed by way of a Construction Management Plan if considered appropriate by the Board.

7.9. Appropriate Assessment

- 7.9.1. Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, I do not consider that any Appropriate Assessment issues arise and I do not consider 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.

8.0 Recommendation

8.1. I recommend that permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

Having regard to:

- a) 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,
- b) the highly visible context of the proposed structure and the close proximity to and with views to and from a Protected Structure, a childcare facility and proximate residential in this urban area of Clonmel,
- c) The policies and objectives of the Tipperary County Development Plan 2022-2028, including Planning Policy 6.10 (6-6), which require orderly development of telecommunications infrastructure where there will be no significant adverse impact on the surrounding areas and the receiving environment.
- d) The policies and objectives of the Clonmel and Environs Development Plan 2013, including Telecommunications Policy INF 11.

It is considered that the proposed development does not comply with national, regional and local guidelines as the applicant has failed to demonstrate sufficiently justification for the mast on the subject site. That the proposal represents a haphazard and piecemeal approach to providing the required coverage in the area to the detriment of the visual and residential amenities of the area. The proposed development would, therefore, set an undesirable precedent and be contrary to the proper planning and sustainable development of the area.

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.

Angela Brereton
Planning Inspector

7th of September 2023