



An  
Bord  
Pleanála

## Inspector's Report ABP-314050-22

### Development

Erection of a 24m high telecommunications lattice structure together with antennas, dishes, headframe and associated telecommunications equipment all enclosed by security fencing and construction of new access track.

### Location

Barna, Cappagh Road, Co. Galway

### Planning Authority

Galway City Council

### Planning Authority Reg. Ref.

22/104

### Applicant(s)

Vantage Towers Ltd

### Type of Application

Permission

### Planning Authority Decision

Refusal

### Type of Appeal

First Party -v- Decision

### Appellant(s)

Vantage Towers Ltd

### Observer(s)

Kevin Kelly

Shane Kelly

**Date of Site Inspection**

8<sup>th</sup> December 2022

**Inspector**

Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located in the western outskirts of Galway City in a position to the north of the roundabout, which serves Cappagh Road (L5025) and the Western Distributor Road (L1013). This site lies to the east of a lane/boreen, known as Boleybeg Boithrin, which runs southwards and then westwards to connect with Cappagh Road, and which is enclosed by walls and hedgerows. One-off dwelling houses and a creche lie further to the west and south-west along Cappagh Road. The area is generally subject to gentle gradients that rise in a northerly direction.
- 1.2. The site is situated towards the northern end of an undulating field with mounds and rocky outcrops. This field is accessed by means of a gate in its south-western corner. An existing monopole mast, which is disguised as a tree, lies to the east of the gate. Track marks across the field indicate that it is serviced via the gate and lane. The main body of the site itself extends over an area of 0.012 hectares.

## 2.0 Proposed Development

- 2.1. The proposal would entail the erection of a 24m high telecommunications lattice structure with a headframe to which 6 no. antennae and 5 no. dishes would be attached and operated by Vodafone. Below the headframe a further two sets of 2 no. antennae and 1 no. dish would be attached for use by two other operators, i.e., Eir and Three. An accompanying compound would accommodate equipment cabinets, and it would be enclosed by security fencing and south-facing gates.
- 2.2. The proposal would also entail the construction of a new 90m access track. This track would parallel the lane to the west, and it would connect with an existing gate onto this lane to the south.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was refused for the following reasons:

1. *The Galway City Development Plan 2017 – 2023 under Section 3.10 states it is policy to reserve the preferred route corridor of the N6 Galway City Ring Road (N6 GCRR)*

*project which has been selected to accommodate the requirements of an emerging strategic road and the associated bridge crossing of the River Corrib. In this instance, the proposed development access road and development site location is positioned within and in close proximity to the preferred and/or approved route of a national roads scheme, N6 GCRR, and, if permitted, the proximity of the proposed development will prejudice the plans for the delivery of this scheme and materially contravene the policy of the Galway City Development Plan 2017 – 2023.*

*2. The applicant has not demonstrated and satisfied to the Planning Authority that the proposed development will not have a negative impact on the conservation and preservation of a European site, the Galway Bay Complex cSAC and SPA, having regard to the scale, extent and specifications of the development.*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

See the advice of the TII and GCRR Project Manager, which prompted the first reason for refusal cited above.

### **3.2.2. Other Technical Reports**

- IAA: No requirements.
- TII: Objects, as the site is close to the route of the N6 Galway City Ring Road (GCRR), and so the proposal could prejudice plans for the delivery of this Road, thereby contravening Section 2.9 of the Spatial Planning and National Roads Guidelines.
- GCRR Project Manager: Objects, as the submitted location map shows the access gate and a portion of the proposed access road lying within the land take for the GCRR and so they would be in conflict with the same.

## **4.0 Planning History**

Site: None.

Site to the south-east:

- 04/458: 24m high monopole support structure, antennae, equipment cabinet, access road, and security fencing: Granted at appeal PL61.208611 for 5 years.
- 09/488: Further 5 years granted: red safety light added.
- 15/145: Further 2 years granted at appeal PL61.245381.
- 18/173: Further 2 years granted.
- UD:15/019: As previous permissions have lapsed, an enforcement notice has been served.

## 5.0 Policy and Context

### 5.1. National Planning Guidelines

- National Development Plan 2018 – 2027
- National Planning Framework 2020 – 2040
- Telecommunications Antennae and Support Structures Guidelines as revised by Circular Letter PL 07/12.

### 5.2. Regional Spatial & Economic Strategy for the Northern and Western Region 2020 – 2032

Regional Policy Objective (RPO) 6.36 states, “Support the roll-out of the National Broadband Plan within the lifetime of this strategy and grow the regional digital economy.”

### 5.3. Development Plan

The Planning Authority’s decision cites the Galway City Development Plan 2017 – 2023, which has since been replaced by the Galway City Development Plan 2023 – 2029 (CDP) on 4<sup>th</sup> January 2023. The new CDP continues to show the site as lying within an area zoned for agriculture, within which the objective is “To provide for the development of agriculture and to protect the rural character.” Public utilities “may contribute to the zoning objective, dependent on the location and scale of

development.” The route of the GCRR is shown as running to the south of the site and the route of a recreational greenway runs to the west. Item 22 of Policy 4.6 states the following:

*Reserve the route corridor of the N6 Galway City Ring Road (N6 GCRR) project as approved with conditions and modifications by An Bord Pleanala which accommodates the designed strategic road and the associated bridge crossing of the River Corrib.*

Policy 9.9 addresses telecommunications and smart technology. It states the following:

- 1. Support the development and expansion of telecommunication infrastructure (including the broadband network) within the city where appropriate, subject to environmental, visual and residential amenity considerations.*
- 2. Ensure that developers of masts facilitate the co-location of antennae with other operators in order to avoid an unnecessary proliferation of masts. Where this is not possible operators will be encouraged to co-locate so that masts and antennae may be clustered.*
- 3. Ensure that development for telecommunication and mobile phone installations take cognisance of the Planning Guidelines for Telecommunications Antennae and Support Structures (DECLG, Circular Letter PL07/12) and in relation specifically to new free standing masts and antennae, locations in the immediate proximity to residential areas, schools and other community facilities will only be considered where all other more suitable options, including opportunities to locate on tall buildings, rooftops and co-location with existing masts, have been exhausted following an evidenced based evaluation of potential sites.*
- 4. Facilitate the rollout of digital infrastructure to implement a world class digital infrastructure and sensor network that will provide real time data and smart city solutions.*
- 5. Support the actions of the draft Galway City Digital Strategy (2020-2024).*

#### **5.4. Natural Heritage Designations**

- Lough Corrib SAC (000297)
- Galway Bay Complex SAC (000268)
- Inner Galway Bay SPA (004031)

## 5.5. EIA Screening

The proposal is for a telecommunications structure with antennae and dishes. As such, it does not come within the scope of any of the classes of development that are potentially the subject of EIA.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The applicant begins by providing background information to the proposal. Attention is drawn to the size of the Irish market for mobile communications and the concentration of demand for 4G and increasingly 5G services. Attention is also drawn to the existing 24m high monopole c. 103m to the south-east of the site. This monopole supports equipment operated by Vodafone, Eir, and Three. However, it needs to be removed, due to the N6 Galway City Ring Road (GCRR) Project. The planning history of this monopole entails a series of temporary permissions, which have now lapsed, and an enforcement notice, which has been served on the applicant to have it removed.

The impetus for the current proposal arises from the above cited factors. It would be sited within the vicinity of the existing monopole site and so it would ensure continuity of coverage for the operators concerned. (Each of these operators has written in support of the proposal). Alternative sites were considered, but they would necessitate the siting of two or more masts in urban areas to the west and east of the current site.

Under the assessment criteria set out in the Telecommunications Antennae and Support Structures Guidelines, the applicant reviews its proposal as follows:

- Design and siting: The proposal would be the same height as the monopole that it would replace, and it would be sited nearby.
- Visual impact: The proposal would be partially screened by hedgerows and trees in the vicinity of the site. Photomontages illustrate the limited visibility of the proposal, with the overall impact being described as “negligible”.



- Access: Under the proposal, a new access track would be constructed to the south of the site to connect with an existing lane. However, under the N6 GCRR Project, this means of access would be severed and so the applicant has gained the landowner's consent to access the site from the north off an alternative access which would be provided under the N6 GCRR Project and which would ensure that the landowner's lands remain accessible.
- Mast sharing: The 3 no. existing operators would share the use of the proposed lattice structure and its compound.

The applicant has responded to the first reason for refusal as follows:

- The description of the main body of the site as being "within and in close proximity to the preferred and/or approved route" of the N6 GCRR is contested. The objection of the GCRR Project Manager relates to the new access track to the site. However, as outlined above, this access track would be a temporary one for use only until an alternative access from the north is available. If a compensation concern lies behind the objection, then the applicant states explicitly that it will not seek/expect to be compensated for the loss of the southern access route.

The applicant has responded to the second reason for refusal as follows:

- Given the scale and nature of the proposal and its proximity to both the mast to be replaced and the route of the N6 GCRR, a screening for appropriate assessment exercise was not considered necessary at the application stage. Nevertheless, at the appeal stage, screening has been undertaken and the applicant concludes that either alone or in-combination with other plans and/or projects, the current proposal does not have the potential to significantly affect any European site, in the light of its conservation objectives.

The applicant summarises various national plans and reports that emphasise the importance of telecommunications infrastructure. It also cites the experience of Covid 19 and the importance of telecommunications that emerged during the ensuing pandemic.

## 6.2. Planning Authority Response

None

## 6.3. Observations

(a) Shane Kelly of Cappagh Road

The following legal opinions are expressed:

- As the application and appeal were made in 2022, the Board is obliged to make its decision in the light of the then operative CDP, i.e., for 2017 – 2023.
- Time was lost in notifying the observer of the appeal and so he was disadvantaged. Consequently, the appeal should be disallowed.
- Section 35 of the Planning and Development Act, 2000, as amended, is cited. Attention is drawn to the enforcement notice against the applicant's existing mast in the area. The Planning Authority's refusal of the current application implicitly factors-in this notice, and so, under Sub-section 6(C), no right of appeal pertains.

Confusion over access

- The applicant's proposed sequential access arrangements are critiqued on the basis that it cannot be sure that the northern route would be in-situ once the southern route is cancelled, i.e., only once the construction programme is finalised will the applicant be able to establish whether continuity of access would be available. Any discontinuity would pose a risk to the area in the event of a fire at the proposal, such as that which occurred at the applicant's existing mast.

Telecommunications Antennae and Support Structures Guidelines

- Section 4.6 of the above cited Guidelines states that applicants should submit a statement of compliance with the International Commission on Non-Ionising Radiation Protection. Such statements are required to demonstrate by means of technological and scientific analysis how compliance would be achieved. The current applicant has not submitted a statement and so it has contravened Section 4.6.

## Appeal PL61.208611

- The circumstances that prompted the inspector reporting on the above appeal to recommend refusal still pertain today, i.e., the site is not one of “last resort”, given the proximity of a creche and housing and given, too, industrial/commercial zoned lands in the wider area. This recommendation establishes a precedent.

## Description of the applicant

- The company directors cited on the completed application forms and the company directors cited on the Companies Registration Office do not tally. The Companies Act, 2014 as amended, requires accuracy in such citation. The applicant does not appear to be compliant in this respect.

## Newspaper notice

- At the appeal stage, the applicant has submitted a NIS, and yet, contrary to the requirements of Article 112 of the Planning and Development Regulations, 2001 as amended, no newspaper notice stating the same has appeared.

## Site notice concerning the application

- The site notice was posted in a position whereby it was not legible from the adjacent publicly accessible lane. The requirements of Article 19(1) of the above cited Regulations were not met in this respect.

## Site notice concerning the appeal

- No site notice has been posted to advise the public of the appeal.

## The completed application forms

- This form erroneously states that the site is not close to a European site. As the site is close to Galway Bay Complex SAC, an EIAR should have been submitted and its existence advertised.

## Information in an EIAR

- This headings for this information are set out in the above cited Regulations and a commentary is given on where any submitted information falls short.

## Desktop review

- The submitted NIS appears to be based on a desktop review only. As a document, its assembly is at times incoherent. Its objectivity is questioned.

## Drains beneath the site

- Land reclamation works entailed the laying of drains on a north-east/south-west axis under the site and adjacent lands to the west to the Bearna Stream over a distance “much closer” than the 716m cited by the applicant. Tonabrucky Stream, which runs to the south-east of the site, converges with Bearna Stream in Cappagh Park and their combined waters flow into Rusheen Bay, which lies within the Galway Bay Complex SAC. As the submitted NIS does not acknowledge these drains, its assessment does not include the possible contamination of them by the proposal and potential threat to the SAC.

## Local Biodiversity Area (LBA)

- The Galway City Biodiversity Action Plan 2014 – 2022 identifies an “area of blanket bog, fen, wet grassland and scrub located between Cappagh and Ballymoneen Roads as an LBA. Under Section 8.5.12 of the N6 EIAR, species of fauna were identified along Cappagh Road, and yet the impact of the proposal on either the LBA or these species has not been addressed by the applicant’s ecologist.

## Screening for appropriate assessment

- The submitted screening is critiqued insofar as a hydrological link between the site and Galway Bay Complex SAC exists and so a NIS should have been prepared.

## Technical justification report

- The report from Three fails to state why other existing telecommunications sites in the wider area could not be used in accordance with national advice on mast sharing.
- The applicant’s photomontages fail to depict the proposal from vantage points to the west of the site, where along Cappagh Road there are a number of

dwelling houses including the observer's. (Observer (a)'s letter of objection at the application stage draws attention to the landscape impact of the proposal, due to its design and siting within a field, and to the visual impact of the proposal upon the views of local residents to the west and protected views V4 & V5 in the CDP).

#### N6 GCRR

- Planning applications for sites in close proximity to the preferred and/or approved route of the N6 GCRR have consistently been refused. To permit the current application would establish an adverse precedent.
- The proposal would be at variance with advice set out in the Telecommunications Antennae and Support Structures Guidelines and the Landscape and Landscape Assessment Guidelines.

#### Oral hearing request

- If the applicant submits further information to the Board, then the observer requests that an oral hearing be held so that he can assess/respond to such information.

#### Material contravention of the CDP

- The proposal would materially contravene the CDP and so the provisions of Section 37(2)(b) of the above cited Act are applicable.

#### Judicial Review

- In the light of the above observations concerning the contravention of Guidelines and the CDP, any permission may be the subject of a judicial review.

#### (b) Kevin Kelly of Cappagh Road

- Support is expressed for Shane Kelly's observations.
- The observer states that the proposal would fail to comply with the Telecommunications Antennae and Support Structures Guidelines and the CDP. It would not be in keeping with local planning precedents, and this proposal has commenced on site.

- Emergency services were unable to access a site in the vicinity of the existing mast in July 2022. The current proposal would rely upon the same means of access.

#### 6.4. **Further Responses**

None

#### 6.5. **Board Consultees**

Department of Housing, Local Government and Heritage: Attention is drawn to the groundwater vulnerability of the site, which is “extreme/rock near surface” and to the Boleybeg Stream, which lies c. 254m to the east. This Stream flows into the Barna Stream, which lies within the Galway Bay Complex SAC. Accordingly, there is a potential hydrological link via groundwater and surface water between the site and this SAC.

### 7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the National Development Plan 2018 – 2027 (NDP), the National Planning Framework 2020 – 2040 (NPF), Telecommunications Antennae and Support Structures Guidelines as revised by Circular Letter PL 07/12, the Regional Economic & Spatial Strategy for the Northern and Western Region 2020 – 2032 (RSES), the Galway County Development Plan 2023 – 2029 (CDP), the submissions of the parties and the observers, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Preliminary considerations,
- (ii) Policy objectives and mast sharing,
- (iii) Landscape and visual impacts,
- (iv) Access,
- (v) Water, and
- (vi) Appropriate Assessment.

## **(i) Preliminary considerations**

7.2. The observer emphasises that the Board's assessment of the proposal is on a *de novo* basis, and so he raises a considerable number of points in relation to the application and the appeal. I will consider some of these points under the headings used in my summary of them. Other points, which relate to the subjects discussed under other headings in my assessment, will be considered therein.

7.3. Legal opinions

- Contrary to Observer (a)'s view, the relevant CDP is the one in force when the Board makes its decision, i.e., the one for 2023 – 2029.
- Observer (a) was notified of the appeal in time for him to submit his observations before the statutory deadline.
- The provisions of Section 35 are for the Planning Authority, as distinct from the Board, to avail of at its discretion.

7.4. Telecommunications Antennae and Support Structures Guidelines

- Section 4.6 needs to now be read in conjunction with Circular Letter PL 07/12, which advises that health and safety matters emanating from telecommunications equipment are regulated by the Commission for Communications Regulation.

7.5. Description of the applicant

- Concerns over the directors named in the completed application forms were raised with the Planning Authority at the application stage. These concerns did not prompt the Planning Authority to revisit its validation of the application.

7.6. Newspaper notice

- The applicant did not submit a NIS, as distinct from a Stage 1 screening for appropriate assessment, at the appeal stage and so the need to advertise the existence of one does not arise.

7.7. Site notice concerning the application

- Concerns over the legibility of the site notice were raised with the Planning Authority at the application stage. These concerns did not prompt the Planning Authority to revisit its validation of the application.

7.8. Site notice concerning the appeal

- Ordinarily appeals are not required to be advertised by means of a site notice.

7.9. The completed application forms

- Contrary to Observer (a)'s view, I consider that the site is not "close" to a European site.

7.10. Information in an EIAR

- The proposal is not a class of development that is subject to EIA and so the need for EIAR does not arise.

7.11. Oral hearing request

- Contrary to Observer (a)'s view, oral hearing requests can only be made by appellants.

7.12. In the light of the foregoing, I conclude that none of the discussed preliminary considerations preclude the Board from proceeding to assess/determine the application/appeal in the normal manner.

**(ii) Policy objectives and mast sharing**

7.13. The NDP has as a fundamental underlying objective the need to prioritise the provision of high-speed broadband. Likewise, Objective 48 of the NPF undertakes to "develop a stable, innovative and secure digital communications and services infrastructure on an all-island basis." Objective RPO 6.36 of the RSES echoes these national objectives at the regional level. Locally, under Policy 9.9 of the CDP, the Planning Authority undertakes to facilitate the development of telecommunications infrastructure in accordance with the Telecommunications Antennae and Support Structures Guidelines.

7.14. The applicant explains that its proposal would replace an existing operational monopole to the south-east of the site, which would need to be removed under the N6 GCRR. This proposal, like the monopole, would be 24m high. However, it would be sited on slightly higher ground, and it would be a lattice tower structure with a headframe rather than another monopole designed to look like a tree. The existing operators would be accommodated, and the potential would exist for other ones to be added in the future. The applicant advises that such scope would arise from the



specification of a lattice tower structure. It advises, too, that the synthetic tree monopole type has fallen out of favour, due to its tendency to deteriorate and the maintenance challenges that it poses.

- 7.15. The applicant's original letter of support for the application illustrates the importance of the existing mast in terms of the 4G coverage that it affords to the surrounding area for each of the operators, i.e., Vodafone, Eir, and Three. At the appeal stage, Three has augmented this presentation by means of a technical justification report, which illustrates 4G coverage without the existing mast and without its proposed replacement and without the existing mast and with its proposed replacement. The need for a replacement mast is thereby demonstrated if comparable 4G coverage is to be maintained in line with national, regional, and local objectives for the area.
- 7.16. The applicant's original letter of support for the application, as distinct from Three's technical justification report, also sets out its search for alternative structures that could be used to relocate the operators' equipment to. Seven structures were considered. Each presently supports telecommunications equipment. However, due mainly to their distance from the site of the existing mast, they would be incapable of meeting the relevant technical objectives of the operators.
- 7.17. Observer (a) cites the inspector's recommendation on PL61.208611, which the Board overturned in granting the original permission for the existing mast. He expresses the view that the inspector's concern over the proximity of this mast to existing housing and a creche remains relevant to the existing proposal. I consider that the existing mast establishes a precedent for siting a mast in the vicinity of the current application site. While this site would be closer to existing housing and a creche than the existing mast, it would still be comparable to it.
- 7.18. I conclude that the proposal would meet national, regional, and local objectives to ensure that good coverage of particularly 4G to the area surrounding the site would continue to be met. I conclude, too, that this proposal would replace an existing mast that is shared and that it, too, would be shared. I also conclude that the proximity of the existing mast to the site establishes a precedent for the current proposal.

### **(iii) Landscape and visual impacts**

- 7.19. Under Figure 5.1 of the CDP, the site is shown as lying within agriculturally zoned lands to the west of Galway City that contribute to a green network. The lane/boreen

to the south and west of this site, which is known as Boleybeg Boithrin, is identified as a recreational greenway, and the lands between Cappagh and Ballymoneen Roads are designated a local biodiversity area, which comprises blanket bog, fen, wet grassland and scrub.

- 7.20. The site lies towards the northern end of an elongated field, which is down to grass, albeit with mounds and rocky outcrops in places. Woodlands lie on either side of the field, which rises by means of gentle gradients to the north. Boleybeg Boithrin passes along the eastern edge of the woodland to the west and the existing mast is surrounded by the woodland to the east. Views from Boleybeg Boithrin are partially screened by the hedgerow beside the field and so, at present, the visibility of the site from this boreen, which is itself partially overgrown, are limited. Views of the existing mast are facilitated by an agricultural gateway, which corresponds with it, and which affords access to the field.
- 7.21. The landscape impact of the proposal would be greater than that of the existing mast, insofar as it would entail the introduction of a self-evidently man-made structure whereas the existing mast's landscape impact is muted by its tree disguise. Whether the "authenticity" of the proposal's utilitarian character is preferable to the pastiche tree design of the existing mast is ultimately a subjective judgement. Either way the precedent exists for a mast within the area and so to that extent the proposed replacement one would not "break new ground" in landscape terms.
- 7.22. The applicant has submitted photomontages of the proposal, which illustrate that, like the existing mast, its upper portion would be visible from new development to the east at Maolin, which comprises housing and a school, known as Colaistena Coirbe. Views from publicly accessible routes to the north and south would be largely screened by a combination of topography, vegetation, and buildings.
- 7.23. Observer (a) critiques the submitted photomontages, as they do not include views from Cappagh Road to the west of the site, where there is a creche and one-off dwelling houses, including his own one. I judge that such views would be largely screened by the proximity of the woodland to the west of the site. Where views would include the proposal, it would be partially screened by trees in a similar manner to the above cited view from the east.

- 7.24. The applicant assesses the overall visual impact of the proposal to be “negligible”. I consider that the averaging of impacts implied by such an assessment is not especially meaningful. Given that the proposal would be a replacement one, certain views to the east and to the west of the site would be “slightly” affected, insofar as the new mast would be a more transparently utilitarian structure.
- 7.25. Observer (a) draws attention to views V4 & V5 in the CDP, which are protected. However, these views are of the coastline to the south of the site and they exist at points closer to the coastline than that of the site or its surrounding area.
- 7.26. I conclude that the proposal would be compatible with the surrounding landscape and the visual amenity that it affords.

#### **(iv) Access**

- 7.27. The submitted plans show that the site would initially be accessed from the south by means of a new access track, which would parallel the boreen known as Boleybeg Boithrin to the west of the host field. Notation on these plans states that some “trimming of tree branches will be required”. This new access track would be 90m in length and it would connect with an existing agricultural gateway onto the wider laneway portion of Boleybeg Boithrin, which connects with Cappagh Road to the south-west. Notation on the submitted plans also states that the new access track would be an interim means of access and that a “future access route will be required from the north of the compound when the new ring road is built.”
- 7.28. The Planning Authority’s first reason for refusal states that the new access track and development site location are positioned within and in close proximity to the preferred and/or approved route of the N6 GCRR. The proposal would thus prejudice the delivery of this road scheme and, as such, materially contravene the CDP.
- 7.29. The applicant has responded by drawing attention to the advice of the GCRR Project Manager who stated that the applicant should confirm that their proposal for the application has taken account of the GCRR design and who objected to the proposed new access track as it would come within the land take for the GCRR. It states that the proposed lattice tower structure would be 95m away from the route of the GCRR and so it would not be positioned within and in close proximity to the same. It also states that the proposed means of access, which would be severed by the GCRR, would only be an interim one. In this respect, attention is drawn to the

landowner of the host field, who would be provided with an alternative means of access to her field off Cappagh Road as part of the GCRR project. This alternative means of access would reach the field at a point to the north of the current application site. The applicant has, accordingly, received the landowner's consent to construct a new access track to its site from this access point. This track, presumably like the interim one, would be 3m wide and it would be similar in all respects to a typical agricultural track.

7.30. Observer (a) expresses the concern that the sequential approach to providing access to the site could only be established as tenable in the light of a yet future construction programme for the GCRR. If the site were to become inaccessible for a period, then a fire risk would arise. In this respect both observers refer to a fire that affected the existing mast.

7.31. I consider that the site itself would be sufficiently clear of the route of the GCRR so as not to prejudice its delivery. Accordingly, no material contravention of the CDP would arise, and no adverse precedent would be established. I also consider that the applicant has addressed the interim and the long-term access arrangements for the site. In the case of the former, it has shown the proposed route, in the case of the latter, it has identified the direction of the proposed route. Given that any construction programme could reasonably be expected to ensure continuity of access to the landowner's field, I do not anticipate that would be any period during which the site would not be capable of being accessed. Given, too, the applicant's interest in ensuring that such access is in-situ at all times, its co-operation in this respect could reasonably be anticipated. Conditions addressing the exact details of both routes should be attached to any permission.

7.32. I conclude that the applicant has outlined how access arrangements to the site would be reconciled with the delivery of the N6 GCRR.

#### **(v) Water**

7.33. The submitted plans show an existing drain to the west of the site. This drain parallels Boleybeg Boithrin and it runs between the western boundary of the site and the eastern boundary of the boreen. It is c. 2m away from the site and its direction of flow is southward with the downward gradient of the land.

- 7.34. Observer (a) advises that there are other land drains that run on a north-east/south-west axis, which discharge to the Bearna Stream to the west of Cappagh Road. The Tonabrucky Stream passes to the east and south of the field, which hosts the site, and it converges with the Bearna Stream in Cappagh Park. The combined streams flow into Rusheen Bay further to the south.
- 7.35. The Department of Housing, Local Government and Heritage, as consultee to the Board, advises that the groundwater vulnerability of the site is “extreme/rock near surface” and it further advises that groundwater may converge with surface water. In this respect, it draws attention to the Tonabrucky Stream, which it refers to as the Boleybeg Stream.
- 7.36. During the construction phase of the proposal, a 6.25m x 6.25m concrete foundation would be constructed for the proposed lattice tower structure to a depth of 1.2m. Notation on the submitted plans states that a rock breaker would be required on the site for the installation of this foundation. The applicant thereby signals its awareness of the site’s ground conditions.
- 7.37. Subject to standard construction practices designed to control surface water on the site and to safeguard surface water in the vicinity of the site, the proposal would be compatible with maintaining surface water quality. Given the groundwater vulnerability of the site, the installation of the foundation should be undertaken during dry conditions to minimise the risk of surface water run-off conveying contaminants to the groundwater beneath the site.
- 7.38. I conclude that, subject to the adoption of standard construction practices, the proposal would be compatible with safeguarding the quality of surface and groundwater.

**(vi) Appropriate Assessment**

- 7.39. The Planning Authority’s second reason for refusal refers in effect to the absence of a Stage 1 screening for appropriate assessment from the application. The Planning Authority is not, therefore, able to conclude that the proposal would not have a negative impact on two European Sites, i.e., Galway Bay Complex SAC (000268) and Inner Galway Bay SPA (004031). The applicant has responded at the appeal stage by submitting a Stage 1 screening.

7.40. Additionally, Observer (a) draws attention to a local biodiversity (LBA) area between Cappagh and Ballymoneen Roads. He critiques the applicant's Stage 1 screening report for not addressing fauna in this LBA. However, Stage 1 screening is concerned with European sites only and so the LBA does not come within its ambit.

7.41. The site lies within an area of groundwater vulnerability that is classified as "extreme/rock near surface" and within an area of surface water drains. Ground and surface waters may converge and discharge to the Tonabrocky and Bearna Streams, which flow into Rusheen Bay, which lies within both the Galway Bay Complex SAC and the Inner Galway Bay SPA. Accordingly, there may be a hydrological link between the site and these European sites and so the need for a Stage 1 screening for appropriate assessment arises. I will undertake such screening drawing upon the applicant's "Report in support of appropriate assessment screening", the NPWS website, the advice of the Department of Housing, Local Government and Heritage, and my own site visit.

7.42. Compliance with Article 6(3) of the Habitats Directive

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under Part XAB of Section 177U of the Planning and Development Act 2000, as amended, are considered fully in this section.

7.43. Background to the application

The applicant has submitted a screening report for appropriate assessment as part of its appeal, i.e., "Report in support of appropriate assessment screening" dated July 2022. This report was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European sites within a possible zone of influence of the development. It concluded that

*Through an assessment of the source-pathway-receptor model, which considered the zone of influence of effects from the proposed development and the potential in-combination effects with other plans or projects, the following findings were reported: The proposed development at Barna, Cappagh Road, Co. Galway either alone or in-combination with other plans and/or projects, does not have the potential to significantly affect any European site, in light of its conservation objectives. Therefore, a Stage 2 appropriate assessment is deemed not to be required.*

7.44. Screening for appropriate assessment – test of likely significant effects

The project is not directly connected with or necessary to the management of a European site and therefore it needs to be determined if the development is likely to have significant effects on European site(s).

The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European site.

#### 7.45. Brief description of the development

The applicant provides a description of the project on page 9 of its screening report. In summary, the development comprises:

*Erection of a 24m high telecommunications lattice structure together with antennas, dishes, headframe and associated telecommunications equipment all enclosed by security fencing and construction of new access track.*

The development site is described on Page 8 of the applicant's screening report. It is described as comprising agricultural grassland, which is adjacent to woodlands.

Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Construction phase: uncontrolled contaminated surface water run-off,
- Construction phase: noise and disturbance, and
- Operational phase: bird flight collision.

#### 7.46. Submissions and observations

Department of Housing, Local Government and Heritage: Attention is drawn to the groundwater vulnerability of the site, which is "extreme/rock near surface" and to the Boleybeg Stream, which lies c. 254m to the east. This Stream flows into the Barna Stream, which lies within the Galway Bay Complex SAC. Accordingly, there is a potential hydrological link via groundwater and surface water between the site and this SAC.

7.47. European sites

7.48. The development site is not located in or immediately adjacent to a European site.

The closest European sites are the Galway Bay Complex SAC and the Inner Galway Bay SPA, the former of which is 0.75km away and the latter of which is 1.49km away.

7.49. A summary of the aforementioned two European sites is presented below. These are the only two sites within 15km of the development site where there would be a possible connection with the proposed development. Their qualifying interests are listed and their conservation objectives, which are either to restore (R) or to maintain (M) their favourable conservation condition, are cited.

### **Galway Bay Complex SAC**

*Mudflats and sandflats not covered by seawater at low tide [1140] – M*

*Coastal lagoons [1150] – R*

*Large shallow inlets and bays [1160] – M*

*Reefs [1170] – M*

*Perennial vegetation of stony banks [1220] – M*

*Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] – ?*

*Salicornia and other annuals colonising mud and sand [1310] – M*

*Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330] – R*

*Mediterranean salt meadows (*Juncetalia maritimi*) [1410] – R*

*Turloughs [3180] – M*

*Juniperus communis formations on heaths or calcareous grasslands [5130] – R*

*Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (\* important orchid sites) [6210] – M*

*Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae* [7210] – M*

*Alkaline fens [7230] – M*

*Limestone pavements [8240] – ?*

*Lutra lutra (Otter) [1355] – R*

*Phoca vitulina (Harbour Seal) [1365] – M*



## Inner Galway Bay SPA

*Black-throated Diver (Gavia arctica)* [A002] – ?  
*Great Northern Diver (Gavia immer)* [A003] – M  
*Cormorant (Phalacrocorax carbo)* [A017] – M  
*Grey Heron (Ardea cinerea)* [A028] – M  
*Light-bellied Brent Goose (Branta bernicla hrota)* [A046] – M  
*Wigeon (Anas penelope)* [A050] – M  
*Teal (Anas crecca)* [A052] – M  
*Shoveler (Anas clypeata)* [A056] – M  
*Red-breasted Merganser (Mergus serrator)* [A069] – M  
*Ringed Plover (Charadrius hiaticula)* [A137] – M  
*Golden Plover (Pluvialis apricaria)* [A140] – M  
*Lapwing (Vanellus vanellus)* [A142] – M  
*Dunlin (Calidris alpina)* [A149] – M  
*Bar-tailed Godwit (Limosa lapponica)* [A157] – M  
*Curllew (Numenius arquata)* [A160] – M  
*Redshank (Tringa totanus)* [A162] – M  
*Turnstone (Arenaria interpres)* [A169] – M  
*Black-headed Gull (Chroicocephalus ridibundus)* [A179] – M  
*Common Gull (Larus canus)* [A182] – M  
*Sandwich Tern (Sterna sandvicensis)* [A191] – M  
*Common Tern (Sterna hirundo)* [A193] – M  
*Wetland and Waterbirds* [A999] – M

### 7.50. Identification of likely effects

(i) During the construction phase, surface water run-off could potentially be contaminated with silt, cement, and hydrocarbons and so have adverse impacts upon water quality in the European sites.

The qualifying interests that could be affected by a deterioration in water quality would be as follows:

- In the Galway Bay Complex SAC: Otter, and
- In the Inner Galway Bay SPA: All the sea and wetland bird species listed.

However, given the small scale of the proposed development, the short duration of the construction phase, and the dilution that would occur between surface water run-off leaving the site and reaching the European sites, no significant effect on water quality in the European sites would occur. As no significant effect would arise, any in-combination effect with other plans and/or projects discharging surface water to these European sites would not be significant either.

(ii) During the construction phase, noise and disturbance could disrupt fauna only none of the fauna qualifying interests of the two European sites either breed or forage in the habitat provided by the site and its host field.

The site is in a rural location. While the N6 GCRR would occur within the wider area of this site, the proposed development would replace an existing mast that would lie within the footprint of the GCRR route and so, in the nature of the case, it would occur before the GCRR. In-combination effects from the two projects in terms of noise and disturbance would not therefore occur together.

(iii) During the operational phase, the height of the proposed development at 24m could pose a risk of collision to birds in flight. Research to date on the risk posed by higher structures, i.e., over 40m, indicates that bird mortality may arise. The IAA has not requested that the proposed lattice tower be topped-off with a red beacon, and this tower would not require guide wires or power lines. Consequently, the absence of lighting would not attract birds and any hazard posed by wires would not ensue. While the SPA is 1.49km away, the site does not form part of any preferential route for migrating/commuting sea or wetland birds, which constitute this European site's qualifying interests. Thus, no significant effect on the conservation objectives of these qualifying interests would arise.

No other high developments are proposed for the area surrounding the site and so no in-combination effects would arise.

#### 7.51. Mitigation measures

No measures designed or intended to avoid or reduce any harmful effects of the project on a European site have been relied upon in this screening exercise.

## 7.52. Screening determination

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that the project individually or in combination with other plans and/or projects would not be likely to give rise to significant effects on European Sites Nos. 000268 and 004031, or any other European site, in view of the Sites' conservation objectives, and appropriate assessment (and submission of a NIS) is not therefore required.

This determination is based on the following:

- The small scale of the project,
- The short duration of the construction phase, and
- The dilution factor provided by watercourses between the site and the European Sites.

In making this screening determination no account has been taken of any measures intended to avoid or reduce potentially harmful effects of the project on a European site.

## 8.0 Recommendation

That permission be granted.

## 9.0 Reasons and Considerations

Having regard to:

- The National Development Plan 2018 – 2027,
- Objective 48 of the National Planning Framework 2020 – 2040,
- The Telecommunications Antennae and Support Structures Guidelines as revised by Circular Letter PL 07/12, and
- Policy 9.9 of the Galway City Development Plan 2023 – 2029,

It is considered that, subject to conditions, the proposal would contribute to the roll out of broadband services in accordance with national, regional, and local objectives.

The landscape and visual impacts of the development of the site would be compatible with the amenities of the area. Proposed access arrangements would be capable of being reconciled with the delivery of the N6 Galway City Ring Road Project to the south of the site. Subject to the adoption of standard construction practices, the proposal would be compatible with safeguarding the quality of surface and groundwater. The proposal would, therefore, accord with the proper planning and sustainable development of the area.

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that the project individually or in combination with other plans and/or projects would not be likely to give rise to significant effects on European Sites Nos. 000268 and 004031, or any other European site, in view of the Sites' conservation objectives, and appropriate assessment (and submission of a NIS) is not therefore required.

This determination is based on the following:

- The small scale of the project,
- The short duration of the construction phase, and
- The dilution factor provided by watercourses between the site and the European Sites.

In making this screening determination no account has been taken of any measures intended to avoid or reduce potentially harmful effects of the project on a European site.

## 10.0 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 received by the Board on the 11 <sup>th</sup> day of July 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
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	<p>development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>(a) Prior to the commencement of development, the developer shall submit to and agree in writing with the Planning Authority a scheme for the interim access track to the site. This scheme shall provide details of the width, levels, and materials that shall be comprised in this track.</p> <p>(b) Prior to the construction of the long-term access track to the site, the developer shall submit to and agree in writing with the Planning Authority a scheme for the long-term access track to the site. This scheme shall provide details of the route, width, levels, and materials that shall be comprised in this track.</p> <p><b>Reason:</b> In order to ensure orderly and well-planned development.</p>
3.	<p>Prior to the commencement of development, the developer shall submit to and agree in writing with the Planning Authority a construction management plan for the site. This plan shall undertake to install the proposed foundation during dry weather conditions, and it shall specify standard construction measures to control surface water run-off from the site and to protect surface water in the vicinity of the site.</p> <p><b>Reason:</b> In order to safeguard water quality.</p>
4.	<p>Details of the proposed colour scheme for the telecommunications structure, ancillary structures and fencing shall be submitted to and agreed in writing with the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of the visual amenities of the area.</p>
5.	<p>The developer shall allow, subject to reasonable terms, other licensed mobile telecommunications operators to co-locate their antennae onto the telecommunications structure, subject to the provisions of Class 31 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 (as amended).</p>

	<b>Reason:</b> In order to avoid the proliferation of telecommunications structures in the interest of visual amenity.
6.	On decommissioning of the telecommunications structure, the structure and all ancillary structures shall be removed, and the site reinstated within 3 months of decommissioning.  <b>Reason:</b> In the interest of the proper planning and sustainable development of the area.

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Hugh D. Morrison  
Planning Inspector

20<sup>th</sup> January 2023