



An
Bord
Pleanála

Inspector's Report ABP 314841-22

Development	Replace 2 no. timber poles with an 18m telecommunications monopole and associated telecommunications equipment.
Location	Eir Exchange, Ladywell, Ballyheigue. Co. Kerry.
Planning Authority	Kerry Co. Council.
Planning Authority Reg. Ref.	22/787.
Applicant(s)	Eircom Limited (T/A EIR).
Type of Application	Permission.
Planning Authority Decision	To Refuse Permission.
Type of Appeal	First Party
Appellant(s)	Eircom Limited (T/A EIR).
Observer(s)	Niall Lucey & Dorren Browne Cathal & Ita O' Regan
Date of Site Inspection	October 12 th 2023.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site lies to the northeast of Ballyheigue in Co. Kerry. It accommodates 2 no. existing 12m high wooden poles and an exchange building with a steel pole and dish attached to its southern elevation. The site is located off the R551 regional road and a fence forms the roadside boundary. The remaining boundaries are formed by a low wall with some vegetative screening. There is gated pedestrian access to the property from the regional road.
- 1.2. The site is adjoined to the north and east by the boundaries of an existing dwelling. To the south there is a roadway which provides access to the dwelling and agricultural land to the rear. It also provides vehicular access to the carpark associated with Lady's Well, which is listed as a Recorded Monument, which contains a holy well, grotto, Mass altar, sunken gardens and public toilet facilities.
- 1.3. The site is located on the outskirts of the town and the main land uses include agriculture with some residential development in the vicinity of the site. The main built-up area of the town is located to the southwest. The town functions mainly as residential settlement but also as a traditional seaside tourist destination.

2.0 Proposed Development

- 2.1. The development as described in the public notices submitted with the application proposes the replacement 2 no. 12 m timber poles on the site with an 18m telecommunications monopole support structure (19.5m with lightning finial) carrying antennas, dishes and associated equipment, with equipment cabinets at ground level, fencing and landscaping.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for the development for 2 no. reasons as follows:

1. The proposed development would contravene Objective KCDP 14-8 of the Kerry County Development Plan 2022-2028 which is to ensure that the

location and provision of telecommunications infrastructure should minimise and/or mitigate any adverse impacts on communities, public rights of way and the natural environment. It is considered that the proposed development would constitute a highly obtrusive development and would have a significant overbearing impact on the adjacent Lady's Well site, a holy well and a recorded monument site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would conflict with the 'Telecommunications Antennae and Support Structures-Guidelines for Planning Authorities', Department of the Environment and Local Government 1996' *that only as a last resort should free-standing masts be located on or in the immediate surrounds of smaller towns and villages*'. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area'.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report of 15/9/22 states that the site is located outside the development boundary of the village as outlined in the Ballyheigue Local Area Plan 2020-2026. The proposal is a new structure and not a replacement proposal. There is a dwelling house located 55m to the east and it is not considered that the proposed development would impact on the amenity of the dwelling.

Having regard to the proximity of the adjacent Holy Well, a Recorded Monument and the visual impact inflicted by the proposed development, it is considered that the proposed development would be visually intrusive and would impact on the amenity of the area and contravene Objective KCDP 14-82 and be contrary to the proper planning and sustainable development of the area. A refusal of planning permission is recommended.

3.2.2. Other Technical Reports

None

4.0 Prescribed Bodies

- 4.1. **Irish Aviation Authority:** No requirement for obstacle lighting to be located on the structure.

5.0 Planning History

20/931 – Planning permission refused on the site for a 21m high monopole telecommunications support structure with antennas, dishes and associated equipment for a similar reason to the current proposal. `

6.0 Policy and Context

6.1. Development Plan

Ballyheigue is identified as a District Town in the **Listowel Municipal District LAP 2020-2026**. The site lies outside the development boundary for the village and is unzoned. It is included in the Record of Monuments and Places (KE0833) in the plan.

Section 14.9 of the **Kerry County Development Plan 2022-2028** contains objectives on Digital Connectivity. The following are of relevance to the proposed development:

KCDP 14-74: Support the sustainable provision of modern and innovative telecommunications infrastructure at appropriate locations.

KCDP 14-79: Achieve a balance between facilitating the provision of telecommunication infrastructure in the interests of social and economic progress and sustaining residential amenity and environmental quality.

KCDP 14-80: Ensure that the location and provision of telecommunication infrastructure should minimise and/or mitigate any adverse impacts on communities, public rights of way and the natural environment.

Section 8.3.1 of the Plan refers to Recorded Archaeological Monuments. It seeks to secure the preservation in situ of such monuments (Objective KCDP 8-24) and to ensure that development proposals within the vicinity of a recorded monument does

not detract from the setting of the feature and is sited and designed appropriately and sympathetically with the character of the monument (Objective KCDP-27).

- 6.1.1. Volume 6 of the Plan contains Development Management Standards and Guidelines. Section 1.14.1 (Telecommunication) provides guidance on planning applications for telecommunications infrastructure. In addition to advice on co-location and sharing of facilities, it highlights the need safeguard the urban and rural environment. It states:

‘Every effort should be made to locate telecommunications masts in non-scenic areas or in an area where they are unlikely to intrude on the setting of, or views to/from national monuments, protected structures or sensitive landscapes. The preferred location for telecommunications antennae is in industrial estates or land zoned for industrial use or in areas already developed for utilities’.

National Planning Guidance

National Planning Framework – Project Ireland 2040

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.

6.2. Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996)

The guidelines aim to provide a modern mobile telephone system as part of national development infrastructure, whilst minimising environmental impact. It is recognised that visual impact is among the more important considerations which has to be taken into account in arriving at a decision on a particular application. Care should be taken when dealing with fragile or sensitive landscapes. It is also stated that an applicant will only have limited flexibility as regards location, given the constraints arising from radio planning parameters etc. Amongst other things, the Guidelines advocate sharing of installations to reduce visual impact on the landscape.

6.3. **DoECLG Circular Letter PL07/12**

This Circular was issued to Planning Authorities in 2012 and updated some of the sections of the above Guidelines including ceasing the practice of limiting the life of the permission by attaching a planning condition. It also includes further advice on the issue of health and safety and reiterates that this is regulated by other codes of practice and is not a matter for the planning process.

6.4. **Natural Heritage Designations**

There are a number of European sites in the vicinity of the village including the following:

- Akeragh, Banna and Barrow Harbour SAC
- Magharee Islands SAC
- Tralee Bay Complex SPA
- Kerry Head SPA.

6.5. **EIA Screening**

6.6. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

The grounds of appeal are summarised as follows:

Development plan policies and objectives

- The proposed development supports the policies and objectives of the development plan, having regard to national guidelines, by encouraging the

clustering and co-location of telecommunications infrastructure at an established utilities property.

Visual impact

- The photomontages (Appendix A) submitted clearly demonstrate that the proposed development would not be a highly obtrusive development in the surrounding environment, nor would it have a significant overbearing impact on the adjacent Lady's Well site.
- There is a precedent for infrastructure and utilities at this site and the surrounding environment, which includes mature vegetation and other tall vertical structures including electricity poles, which will assist in screening the proposed development and reducing its visual impact.
- In terms of height, the proposed monopole structure is at the lower end of telecommunications infrastructure generally. It is designed at the minimum height necessary to ensure sufficient radio coverage.
- There will be some visual impact arising from the height of the structure which will be more visible than the existing 12m high poles. The impacts will be intermittent and will have limited impact from public vantage points.
- Having regard to the characteristics of the subject site, the suitability of the site from a technical perspective and noting that the increase in height is required to effectively function for multiple operator requirements, the locational need to be as close as possible to the geographical/population to be served, the magnitude of the impact of the proposed development and the visual amenities of the area would be acceptable.
- The proposed development would not result in a highly intrusive development and would not have a significant overbearing impact on the area, including Lady's Well as evidenced by the photomontages submitted.
- The potential impacts could be further mitigated using a dark colour on the proposed monopole and associated equipment.

Site suitability

- The presence of the utility building and existing infrastructure within the site is considered relevant to its suitability.
- It is not uncommon for such structures or antennae to be located in close proximity to dwellings and villages and there is no requirement for a separation distance (Circular Letter PL07/12).
- The proposal to provide a telecommunication site at an Eir Exchange facility is wholly in accordance with the National Telecommunications Guidelines 1996 and Kerry Co. Council's own policies.
- Having regard to the suitability of the site from a technical perspective, in a utility's location on the outskirts of the village, together with the nature and scale of the proposed development within a built environment, it is considered that the proposal would not seriously injure the amenities of the area.

Co-location of telecommunications equipment

- To facilitate co-location opportunities in line with national and local policy and to meet the coverage requirements for other potential operators, a new support structure of increased height is required.
- The proposed structure is being kept to a height of 18m consistent with effective operation and preferred monopole design as well as incorporating additional users for co-location purposes.

Proximity to Ballyheigue village

- The proposed installation is intended to serve Ballyheigue and must therefore be located in reasonable vicinity to the village.

Planning precedent

- There are numerous precedents where structures of similar height and design have been permitted both by Kerry Co. Council and An Bord Pleanala in existing Eir Exchange facilities (as outlined in submission).
- It is considered that the current proposal would be consistent with the relevant provisions of the plan and in accordance with the proper planning and sustainable development of the area.

Circular PL03/2018

- This Circular requires that waivers for broadband infrastructure (masts and antenna) be extended to include mobile phone infrastructure which is considered should be the case with this proposed development.

7.2. Planning Authority Response

The planning authority's response notes that refusal of the proposal is recommended for the reasons stated in the planning authority's decision.

7.3. Observations

Cathal & Ita O' Regan

- The appeal refers to farmland and a 'house' in the vicinity of the site which is misleading as there are a number of houses in the area.
- The existing mast has the best line of sight to the village and the proposed location will reduce coverage as its line of sight is impeded by the hill to the west of the site. While 18m is stated to be the 'minimum height necessary' services will be impeded by the height of the hill and may result in a planning application to raise the height in the future.
- The reference to replacement equipment is misleading as the wooden poles are redundant and the proposal introduces a new service to the site.
- The location is referred to as an established utilities property but it only ever hosted 'wired services' and never provided wireless customer services.
- There is a change in rationale for the proposed development from application to appeal stage. The application referred to improvements necessary for the Eastern outskirts and beyond while the appeal refers to improvements for Ballyheigue village.
- Eir provide 4 reasons to support the proposed location of the new mast and makes no reference to 'better coverage'.
- Circular Letter PL07/12 is not meant to give free reign for two masts to be located within 400m of a small village where the stated benefit has not been demonstrated.

- Disputes in the strongest way possible that the proposal would not have an overbearing impact in this location. The lack of photomontages from close up within the grotto does not allow this to be assessed.
- Not opposed to the infrastructure but to its location.

Niall Lucey & Dorma Browne

- This is the second application which has been correctly refused permission by Kerry Co. Council on the site which is a special place for Ballyheigue and is totally inappropriate for Eir's plans.
- The existing wooden poles have never been used for 3G or 4G or any wireless technology. The existing infrastructure is used only for land connectivity including broadband while the proposal is for wireless Broadband.
- The proposal is an overdevelopment of the existing old telecommunications infrastructure on the site which is a small inoffensive building.
- The majority of the population of Ballyheigue is well served with 4G coverage from the monopole at the Garda Station which is less than 400m from the site. The proposed development will not significantly improve 4G broadband reach as it will only improve service to the eastern part of the village, which is less populated.
- The Holy Well and Grotto, while open to the public, is privately owned by St Brendan's Trust. Eir does not have any Right of Way or other easement over the access roadway to allow it to develop the site.
- Requests that the Board take into account the objection submitted on the previous application which remains valid in the context of the current application.

8.0 Assessment

8.1. Introduction

Having examined all the application and appeal documentation on file, I consider that the main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

I consider that the main issues that arise for determination by the Board in relation to this appeal relates to the following:

- Principle of the development
- Justification for the development
- Location of development
- Impacts on the amenities of the area
- Appropriate Assessment.

8.2. Principle of the development

- 8.2.1. The proposed development accords with national and local planning policy which broadly supports the provision and enhancement of broadband and telecommunications infrastructure throughout the country in appropriate locations and subject to planning requirements.
- 8.2.2. The development is consistent with the provisions of the county development plan which recognises the importance of a modern, efficient telecommunication system as a vital element of the County's infrastructure to support the economic and social progress of the County and the revitalisation of towns, villages and rural areas. Ballyheigue is identified in the development plan as a town that has significant potential for growth. The growth of the settlement and its ability to attain a critical mass of population and to attract future investment and employment could be curtailed by inadequate high-quality communications infrastructure.

The proposed development would form an integral part of the overall digital network. It would be provided within the existing Eir Exchange and an established utilities facility and would form an essential element in improving the provision of mobile infrastructure in the area. I would, therefore, accept that the proposed development is acceptable in principle in this location, subject to normal planning considerations, which are considered in more detail below.

8.3. Justification for the development.

- 8.3.1. The stated rationale for the proposed development is to improve the coverage and capacity of mobile telecommunications and broadband services in Ballyheigue and surrounding area. According to the information submitted with the application which

included Com Reg coverage maps there is a deficiency in basic 4G coverage on the outskirts of Ballyheigue, particularly to the east.

- 8.3.2. The observers contend that the existing telecommunication structure within Ballyheigue, which is located at the Garda Station c400m to the south has the best line of sight and serves the majority of the local population. However, the applicant has outlined the deficiencies associated with the existing mast in term of the provision of services in the target coverage area. Currently, the top 6m of this mast is reserved for Garda use, with the three telecommunication's operators (eir, Three Ireland and Vodafone) sharing lower locations and further equipment at this location would not improve services in the target area. The existing infrastructure is therefore no longer capable of accommodating eir's coverage requirements and consequently new telecommunications infrastructure is required.
- 8.3.3. I would therefore conclude that the need for a new mast to meet existing and future demand for telecommunication services has been justified by the applicant. It will address an identified deficit in coverage and will facilitate co-location by other service providers which is in accordance with the provisions of the development plan and current guidelines.

8.4. Location of development

- 8.4.1. Concerns have been raised by the observers regarding the location of the proposed telecommunications structure close to the settlement and a recorded monument. The proposed development does not conflict with the guidance provided in the Guidelines or the development plan in that it is not located in an exposed or elevated location, in a fragile or sensitive landscape or in an area where views are protected. It is located against the backdrop of rising vegetated ground in an area already developed for utilities and with the ability to absorb the development. However, it is located proximate to a monument, which is accordance with the guidance should be avoided.
- 8.4.2. The Guidelines state that only as a last resort should new support structures be permitted within or in the immediate surrounds of a settlement. I note that the applicant has not investigated other locations for the proposed development as recommended. While I would accept that a more in-depth analysis of other locations would have been useful in terms of clarity and the justification of the proposed

location, there is a presumption in favour of sites already developed for utilities in the Guidelines.

- 8.4.3. I accept that the site has locational advantages being within an exchange facility, benefiting from established utilities and underground links and close to service demand. While recognising that the site is close to Ballyheigue, it is close to the area to be served. I also consider, given the constraints posed by radio and engineering parameters, the service provider is the best placed to determine the technical suitability of the location and the height required to ensure coverage requirements and signal propagation to target areas and would not develop additional infrastructure where there is existing infrastructure to co-locate.
- 8.4.4. I would therefore conclude that the location of the proposed development is acceptable.

8.5. Impacts on the amenities of the area

- 8.5.1. The concerns raised relate to the height of the mast and its impact on the Lady's Well site and the amenities of the area. The proposed structure is at a lower height than previously refused (20/931) and is stated to be the minimum acceptable consistent with effective 3G and 4G propagation and to minimise visual impacts.
- 8.5.2. The site derives its sensitivity solely from its location adjacent to the Lady's Well, its status as a recorded monument and its significance to the residents of Ballyheigue and the wider population. The proposed development will not result in any direct impacts on the monument, its preservation, protection or its continued use, value and purpose. However, there is potential for indirect impacts on its character and setting arising from the visual impact of the proposed mast.
- 8.5.3. Having regard to the height of the proposed structure, I accept that it will be visible at various distances and to varying extents. The greatest potential for significant impacts would be close to the site. In terms of potential impacts on the Lady's Well site, the lower sections of the mast would be screened by the existing exchange building. While further impacts would be mitigated by the proposed design of the mast (monopole), judicious use of colour and additional screening, it would not be possible to totally eliminate the visual impact in close proximity to the Lady's Well site.

- 8.5.4. However, as noted by the applicant the Lady's Well site is already impacted by other vertical elements including street lights, electricity poles and associated wiring crisscrossing the roadway in the vicinity. Furthermore, the layout of the Lady's Well site is such that the main elements including the grotto, mass altar, and seating areas are orientated to face inwards within the site, which minimises the potential impact of external structures and impacts on the character and setting of the recorded monument.
- 8.5.5. Subject to the mitigation measures proposed, I consider that the structure can be accommodated on the site without significant adverse impacts on the landscape or the visual amenities of the area or the character or setting of the protected structure.
- 8.5.6. Having regard to the established use of the site for utility purposes, the suitability of the site from a technical perspective and its location close to the area to be served and the mitigation measures proposed, I accept that the impact of the development which will be highly localised would be acceptable and would not detract significantly from the amenities of the area or the character or setting of the recorded monument. I would not, therefore, agree with the conclusion reached by the planning authority that the proposed development would be highly intrusive or would have a significant overbearing impact on Our Lady's Well and grotto.

8.6. **Appropriate Assessment Screening**

- 8.6.1. Having regard to the nature and scale of the proposed development, to the absence of emissions therefrom, the nature of receiving environment and the distance from any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

9.0 **Recommendation**

- 9.1. On the basis of the above assessment, I recommend that permission for development be granted for the reasons and considerations set out below.

10.0 **Reasons and Considerations**

Having regard to

- National Planning Framework,

- the current Kerry County Development Plan 2022-2028
- the Listowel Municipal District LAP 2020-2026,
- the Telecommunications Antennae and Support Structures-Guidelines for Planning Authorities 1996 and Circular Letter PL07/12,
- the established use of the site for utility purposes, and
- design of the proposed development,

it is considered that the proposed development is acceptable in terms of location and would not seriously impact on the landscape or the visual amenities of the area and, would not seriously detract from the character or setting of the Lady's Well, a recorded monument and would, therefore, be in accordance with the proposer planning and sustainable development of the area.

11.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The applicant shall allow, subject to reasonable terms, other licensed telecommunications operators to co-locate their antennae onto the subject structure.</p> <p>Reason: In order to avoid the proliferation of telecommunications structures in the area in the interests of visual amenity.</p>
3.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p>

	Reason: In the interest of public health.
4.	Details of the material finish and colour of the telecommunications support structure and associated equipment shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Reason: In the interest of visual amenity.
5.	The boundaries of the site shall be planted with native indigenous species to details to be submitted to and agreed in writing with the planning authority prior to commencement of development. Reason: In the interests of visual amenity.

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

Breda Gannon
Planning Inspector

30th October, 2023