



An
Bord
Pleanála

Inspector's Report ABP-315420-22

Question

Whether the antennae and support structure, is or is not development and is or is not exempted development.

Location

Ballyclare, Ballyleague, Co.
Roscommon

Declaration

Planning Authority

Roscommon County Council

Planning Authority Reg. Ref.

DED 531

Applicant for Declaration

Pat Vesey

Planning Authority Decision

No Decision/Is the Referrer

Referral

Referred by

Roscommon County Council

Owner/ Occupier

Pat Vesey

Observers

Pat Vessy

Date of Site Inspection

4th May 2023

Inspector

Ian Campbell

1.0 Site Location and Description

- 1.1. This case relates to a referral submitted under Section 5(4) of the Planning and Development Act, 2000, as amended, where the Planning Authority has referred a declaration to the Board.
- 1.2. The subject of this referral is a mast/monopole structure located at Ballyclare, Ballyleague, Co. Roscommon. A mast and cabinet are located on a grass verge boarding a footpath on the northern side of the N63, immediately opposite the entrance to St. Faithleachts Gaelic Football Club. The mast/monopole structure is c. 15 metres in height with a dish attached. A cabinet is located at the base of the mast structure.
- 1.3. The lands to the immediate north comprise a field which appears to be in agricultural use. A timber fence forms the southern boundary of the field. There are dwellings located to the east and west of the site.

2.0 The Question

- 2.1. The question that has been submitted in the referral is as follows:
 - Whether the antennae support structure is or is not development, and is or is not exempted development.
- 2.2. In the interest of clarity, and based on the information submitted and my site inspection, it is considered appropriate that the question referred to the Board be reworded as follows:
 - Whether the telecommunications monopole with dish attached, and ancillary cabinet, is or is not development, and is or is not exempted development.

I intend to proceed with my assessment on the basis of the reworded question.

3.0 Planning Authority Declaration

3.1. Declaration

On the 25th November 2022, a request for a Declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, on the above question (see para 2.1) was received by Roscommon County Council from Mr. Pat Vesey.

In accordance with Section 5(4) of the Planning and Development Act, 2000, as amended, the Planning Authority referred the question raised in the referral sought by Mr. Pat Vesey to the Board.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer notes that a licence was issued under Section 254 of the Planning and Development Act, 2000, as amended in respect of a 15 metre high smart streetpole and an operator cabinet.

3.2.2. Other Technical Reports

None received.

4.0 Planning History

4.1. Subject Site

LC/19/15 – Licence GRANTED under Section 254 of the Planning and Development Act, 2000, as amended for the provision of a 15 metre high smart streetpole and operator cabinet. This licence was granted for a period up to the 16th October 2024. A copy of this licence accompanies the referral.

PA. Ref. 18/320 & ABP Ref. 302597-18 – Permission GRANTED for 110 kV overhead powerline.

PA. Ref. 00/1390 – Permission GRANTED for a house.

4.2. Referral History

Having undertaken a review of the referrals database I note that there are no history cases that relate to development of the same form as that the subject of this case.

5.0 Policy Context

5.1. Development Plan

5.1.1. The relevant Development Plan is the Roscommon County Development Plan 2022 – 2028. The subject site is not subject to any specific land use zoning in the Roscommon County Development Plan 2022 – 2028.

5.1.2. The subject site is not indicated as being subject to any specific objectives relating to the protection of views or prospects.

5.2. Natural Heritage Designations

- Lough Ree SPA (Site Code 004046) – c. 0.3 km south-west.
- Lough Ree SAC (Site Code 000440) – c. 0.2 km west.
- Lough Ree pNHA (Site Code 000440) – c. 0.2 km west.

6.0 The Referral

6.1. Referrer's Case

Roscommon County Council (the Planning Authority) have referred this case under Section 5(4) of the Planning and Development Act, 2000, as amended, to An Bord Pleanála for decision. The documentation submitted by the referrer includes a Planning Officer's report in respect of the Declaration which was submitted to Roscommon County Council, including photographs of the site and the original Declaration application form Mr. Pat Vesey.

6.2. Planning Authority Response

The Planning Authority is the referrer in this case.

6.3. Observations

An observation has been received from Mr. Pat Vesey (the referrer/applicant under PA. Ref. DED 531, that being the initial referral which was submitted to the Planning Authority). The main points raised in the observation can be summarised as follows;

- The Planning Authority have used Mr. Vesey's application to seek their own declaration.
- The Board are requested to disregard reports which were added to Mr. Vesey's application by the Planning Authority. The Planning Authority are introducing irrelevant information and have not considered relevant information.
- There is no such reference to 'public domain' anywhere in the planning acts.
- The existence or otherwise of a Section 254 Licence has no bearing on whether any particular works is development or exempt development.
- The Planning Authority have not considered that fact Mr. Vesey owns the land.
- The Planning Authority have made no reference to the exempt development provisions of the acts or the regulations.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 (Works)

Works includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1) (Development)

Development means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4 (4) (Environmental Impact Assessment or Appropriate Assessment)

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 177U (9) (Appropriate Assessment)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

Section 254 (Licensing of appliances and cables, etc., on public roads)

(7) Development carried out in accordance with a licence under this section shall be exempted development for the purposes of this Act.

(8) A person shall not be entitled solely by reason of a licence under this section to erect, construct, place or maintain on, under, over or along a public road any appliance, apparatus or structure.

8.0 **Assessment**

- 8.1. The purpose of this referral is not to determine the acceptability or otherwise of the proposal but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development within the meaning of the relevant legislation.
- 8.2. I have examined all the documentation on the file, inspected the site, and have had regard to the legislative provisions set out in both the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as amended. I consider that the issues raised in the referral can be assessed as follows;.

- Whether the telecommunications monopole with dish attached, and ancillary cabinet, is or is not development, and is or is not exempted development.

8.3. Is or is not development

- 8.3.1. 'Works' are defined as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. The proposal consists of a telecommunications monopole with dish attached, and an ancillary cabinet. I consider the proposal to comprise 'works' as it entails construction.
- 8.3.2. In accordance with Section 3(1) of the Planning and Development Act, 2000 as amended, 'works' become development when they are carried out on, in, over or under land and therefore the works which are the subject of this referral are considered to comprise 'development'.

8.4. Is or is not exempted development

- 8.4.1. The observer to this referral, who is the applicant who initially sought a declaration from Roscommon County Council, states that he is the owner of the site of the subject development. On this basis the observer contends that the provisions under Section 254 of the Planning and Development Act, 2000, as amended, are not relevant considerations for the purpose of determining this referral, rather the provisions contained in the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as amended, are pertinent to the consideration of the referral. In relation to the issue of whether the site of the subject development is on/comprises a public road, I note that it is not the purpose of the Board to review licences which have been granted under Section 254, other than through the appeals process which is provided for under Section 254 (6) (a) of the Planning and Development Act, 2000, as amended. I note that this is not an appeal in respect of a licence granted under Section 254, but rather a referral brought under Section 5 (4) of the Planning and Development Act, 2000, as amended. The purpose of An Bord Pleanála in relation to Section 5 referrals is to ascertain what is and is not development and if development, whether that development is exempted development or not. I submit to the Board that the issue concerning the ownership of the subject site is a civil issue and as such is outside the scope of this referral.

8.4.2. The subject of this referral has the benefit of a licence (PA. Ref. LC/19/15) which was granted by Roscommon County Council under Section 254 of the Planning and Development Act, 2000, as amended. Section 254 (7) provides that '*development carried out in accordance with a licence under this section shall be exempted development for the purposes of this Act*'. On this basis I consider that the subject development is exempt development.

8.5. **Appropriate Assessment – Screening**

8.5.1. Having regard to the nature and limited scale of the works which are the subject of this referral, the developed nature of the landscape between the site and European sites and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the works which are the subject of this referral would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

8.6. **EIA - Screening**

8.6.1. (Form 1 attached) The works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore is not subject to EIA requirements.

9.0 **Recommendation**

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the telecommunications monopole with dish attached, and ancillary cabinet at Ballyclare, Ballyleague, Co. Roscommon, is or is not development, or is or is not exempted development.

AND WHEREAS Mr. Pat Vesey requested a declaration on this issue from Roscommon County Council on the 25th day of November 2022:

AND WHEREAS Roscommon County Council referred this declaration for review to An Bord Pleanála on the 22nd day of December 2022:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (a) Section 4(4) of the Planning and Development Act, 2000, as amended,
- (b) Section 177U (9) of the Planning and Development Act, 2000, as amended,
- (c) Section 254 (7) and (8) of the Planning and Development Act, 2000, as amended

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the referral concerns a telecommunications monopole with dish attached, and ancillary cabinet, and therefore comes within the scope of the definition of development as set out at Section 3 of the Planning and Development Act, 2000, as amended;
- (b) the development was carried out under a licence granted in accordance with Section 254 of the Planning and Development Act, 2000, as amended (PA. Ref. LC/19/15 refers) and therefore Section 254 (7) of the Planning and Development Act, 2000, as amended applies;
- (c) the works which are the subject of this referral are not likely to have significant effects on any European sites,

(d) the works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore are not subject to EIA requirements.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the telecommunications monopole with dish attached, and ancillary cabinet, is development and is exempted development.

Ian Campbell
Planning Inspector

30th January 2024

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-315420-22		
Proposed Development Summary	Whether antennae and support structure is or is not development, and is or is not exempted development		
Development Address	Ballyclare, Ballyleague, Co. Roscommon.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
		No	Conclusion
No			No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No		Preliminary Examination required
Yes		Screening Determination required

Inspector: Ian Campbell

Date: 30th January 2024