



An
Bord
Pleanála

Inspector's Report

ABP-318039-23

Development	Erection of 24-metre-high telecommunications support structure
Location	Waters-Land North, Kinsale, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	23/5315
Applicant(s)	Emerald Tower Limited
Type of Application	Planning Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Emerald Tower Limited
Observer(s)	<ol style="list-style-type: none">1. Peter & Mary Musgrave2. Margaret Teehan3. Owen Teehan4. Alana Murphy5. Patricia Murphy6. Michael Murphy7. Donna Confalone

8. Dilya Pieters Severin
9. Mary Minihane
10. Catherine O'Donovan & Jeremy O'Donovan
11. Richard Musgrave
12. Philomena Coughlan
13. Barbara Barrett

Date of Site Inspection

9th November 2023

Inspector

Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.065 hectares and is located within the townland of Waters-Land North, County Cork, which is located approximately 1km east of the town of Kinsale. The site comprises of agricultural land and is bounded by hedgerow along the west and south boundaries, with the east and north boundaries undefined. The elevation of the subject site is outlined as 80.8m ASL. Access to the site is via a single carriageway road which serves a number of residential dwellings. The nearest residential dwelling to the subject site is located approximately 200 metres south of the site. GIS Mapping (Discovery) shows that the lands surrounding this dwelling are approximately 10 metres below the level of the subject site.
- 1.2. The site is located approximately 700 metres west of the regional road R-600, which is designated as a scenic route under the Cork County Development Plan 2022-2028 (CDP) (Route S60). The subject site is also located within a High Value Landscape area, as designated under the CDP. The Belgooly River is located approximately 400 metres north of the site.

2.0 Proposed Development

- 2.1. The proposal seeks permission to erect a 24-metre-high telecommunications support structure, together with antennas, dishes and associated telecommunications equipment. The structure will be enclosed by security fencing and an existing access track will be extended to the subject site. The design of the proposed structure will be a lattice type.
- 2.2. The security fencing enclosing the structure is to be palisade to a height of 2.4 metres. 3 no. equipment cabinets measuring 1.65 metre and 1.45 metres in height will be located to the north and west of the structure.
- 2.3. The application was accompanied by a number of photomontages and a cover letter, which included a site justification and assessment of alternative locations.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a notification to refuse to grant permission for the proposed development by Order dated 21st August 2023 for the following reason:

1. Having regard to the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities, July, 1996 and the provisions of the current Cork County Development plan 2022, which state that it is important that the landscape, both urban and rural, are considered and protected from any significant impact caused by telecommunication infrastructure and that visual impact should be minimal in the landscape, it is considered the location, scale and height of the proposed development in a very sensitive part of the 'High Value Landscape' and visible from Scenic Route (Ref S60) / Regional Road (R 600) as designated in the Cork County Development Plan 2022, would have a severe obtrusive impact on the character and setting and visual amenities of the area, and would therefore contravene materially with Objectives GI 14-9 (High Value Landscape), GI 14-12 and GI 14-14 (Scenic Route) in the Cork County Development Plan 2022 which seeks to protect the visual and scenic amenities of the County, especially key views and important prospects from scenic routes. The proposed development would seriously injure the visual amenities of the area and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

Planning Reports

- The Area Planner's (AP) report assessed the development in terms of the visual impact, environmental considerations, EIA and AA. The AP considered that the development was not visually acceptable and recommended 1 no. reason for refusal. The report of the Senior Executive Planner agreed with the recommendation of the Area Planner.

Other Technical Reports

- Area Engineer (report dated 11/08/23) – This report stated that the applicant did not demonstrate that they have full, authorised use of the laneway.
- Environment (report dated 21/07/23) – This report raised no objection to the development subject to a number of conditions.

3.3. Prescribed Bodies

- Irish Aviation Authority – They stated that there was no requirement for obstacle lighting on this structure.

3.4. Third Party Observations

A number of third-party observations/submissions were received on the application. Several issues were raised including, inter alia, the impact of the development on the visual amenities of the area, the traffic implications of the development, health and safety concerns, property devaluation concerns, the lack of consultation, the lack of EIA and concerns regarding the submitted photomontages.

4.0 Relevant Planning History

PA Ref. 22/4031

Emerald Tower Limited sought permission for a 24-metre-high lattice telecommunications structure approximately 100 metres west of the subject site, however the application was withdrawn in October 2023.

5.0 Policy Context

5.1. Development Plan

Cork County Development Plan 2022-2028

Section 8.15 The Rural Economy

To maximise the positive impacts of delivering employment near where people live, digital connectivity upgrades and rollout should also have regard to where development is envisaged. Good digital connectivity is considered to be vital to the

rural economy and is discussed further in Chapter 13 Energy and Telecommunications.

Section 13.18 Communications and Digital Connectivity

Access to high quality digital and mobile telecommunications infrastructure is critical to the social and economic wellbeing of communities and can support the revitalisation of towns, villages and rural areas. While the importance of telecommunications infrastructure is acknowledged, it is equally as important that the landscape, both urban and rural, are considered and protected from any significant impact caused by such infrastructure.

Objective ET 13-28: Information and Communications Technology

a) Facilitate the delivery of a high capacity ICT infrastructure and high-speed broadband network and digital broadcasting throughout the County in accordance with the Guidance on Environmental Screening / Appropriate Assessment of Works in relation to the Deployment of Telecommunications Infrastructure (2020).

Objective GI 14-9: Landscape

a) Protect the visual and scenic amenities of County Cork's built and natural environment.

Objective GI 14-12: General Views and Prospects

Preserve the character of all important views and prospects, particularly sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty as recognized in the Draft Landscape Strategy.

Objective GI 14-13: Scenic Routes

Protect the character of those views and prospects obtainable from scenic routes and in particular stretches of scenic routes that have very special views and prospects identified in this Plan.

Objective GI 14-14: Development on Scenic Routes

a) Require those seeking to carry out development in the environs of a scenic route and/or an area with important views and prospects, to demonstrate that there will be no adverse obstruction or degradation of the views towards and from vulnerable

landscape features. In such areas, the appropriateness of the design, site layout, and landscaping of the proposed development must be demonstrated along with mitigation measures to prevent significant alterations to the appearance or character of the area.

Objective GI 14-15: Development on the Approaches to Towns and Villages

Ensure that the approach roads to towns and villages are protected from inappropriate development, which would detract from the setting and historic character of these settlements.

5.2. National Policy

- Project Ireland 2040 – National Planning Framework (2018) and National Development Plan 2021-2030
- Climate Action Plan 2023, as updated

5.3. Regional Policy

- Regional Spatial and Economic Strategy for the Southern Region

Regional Policy Objective (RPO) 137: Mobile Infrastructure

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

5.4. National Guidance

- Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996), and associated Circular Letter PL07/12 (19th October 2012)

5.5. Natural Heritage Designations

The subject site is not located within any designated site. The Sovereign Islands Special Protection Area (SPA) (Site Code 004124) is located approximately 5.5km southeast of the subject site.

5.6. Environmental Impact Assessment (EIA) Screening

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a preliminary examination or screening determination. Refer to Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal by the Applicant was lodged to the Board on 18th September 2023. The grounds of appeal can be summarised as follows:

- The grounds of appeal are provided for under Section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, i.e. regarding a material contravention.
- Quality communications is essential for tourism within Kinsale and its environs.
- Eir must relocate from an existing installation located on the rooftop of Bandon Co-Op Agri Feeds as the coverage from the rooftop installation fails to meet modern demands. A dedicated structure on higher ground is required. Greater coverage and greater flexibility for more equipment sharing can be provided.
- The proposal does not conflict or interfere with the views and enjoyment from the scenic route.
- The area of high value landscapes in Cork is substantial and is unrealistic for the economic growth and development of the county. The development plan does not place a blanket no development policy within HVLs.
- The lattice style is far more flexible and able to incorporate more equipment compared to the monopole.
- The structure does not conflict with objective GI 14-12 and does not impact sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, view of historical or cultural significance.

- The final presentations of photomontages were subject to human error and have been corrected for this appeal. An additional photomontage was provided from the R-600 scenic route. Due to trees and bushes and gradient of lands there are no further vulnerable views along this scenic route. A methodology has been provided on how the photomontages were prepared.
- It is considered that the development plan is too open and arbitrary in respect of specifically addressing telecommunication structures and the 1996 guidelines are considered for assessing the proposed locations. It is considered that the proposal complies with Section 4.2 and 4.3 of the 1996 Guidelines.
- The Development Plan, 1996 Guidelines, regional and national guidelines, National Development Plan and policy documents, Our Rural Future – Rural Development Policy 2021-2025 and ‘Report of the Mobile & Broadband Taskforce & Action Plan for Rural Development’ support the development.
- It is respectfully requested An Bord Pleanála grant permission for the proposed structure.

6.2. Planning Authority Response

The Planning Authority considered that all relevant issues have been covered in the technical reports and had no further comment to make.

6.3. Observations

A total of 13 no. observations were received from Peter and Mary Musgrave, Owen Teehan, Margaret Teehan, Barbara Barrett, Philomena Coughlan, Alana Murphy, Mary Minihane, Patricia Murphy, Michael Murphy, Donna Confalone, Dilys Pieters Severin, Richard Musgrave and Catherine O'Donovan/Jeremy O'Donovan. Their issues and concerns can be summarised as follows:

- Endorse and support the refusal decision by Cork County Council.
- Concerns with the public health and environmental risks in relation to radiation and microwaves. It is recommended that a precautionary approach is adopted regarding 5G frequencies and recent scientific reviews on health effects.

- Concerns with the visual impact of the structure within a high value landscape, the scenic route and on the tourist town of Kinsale and wider area.
- Concerns regarding the environmental impact of a telecommunications tower on biodiversity.
- The site is located adjacent to a lane known as 'Lepers' Lane' and adjacent to the site of Tobhar na Lobhar, a site of local historical significance. Extracts and photographs have been provided.
- Concerns with health and safety of using the laneway to access the site. The laneway is not suitable for high level machinery. The laneway is not a public road and questions are raised regarding its right of way.
- Concerns with visibility onto the L-3231 and L-3232. No analysis of the haul route, construction traffic suitability or the impact on the existing laneway during the construction phase.
- No consultation or engagement undertaken by the applicant with any residents.
- Concerns regarding the height of the proposed development.
- No landscaping plan was submitted with the application. It is suggested that alternative designs more in keeping with surrounding area should be investigated.
- Requested that evidence is provided why the existing licence is not being continued at the Bandon Agri Foods building. There are IDA lands that could incorporate the development.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, after an inspection of the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issues to be considered in this appeal are as follows:

- Site Justification
- Visual Amenity
- Traffic Safety
- Other Issues
- Appropriate Assessment (AA) Screening
- Material Contravention

7.2. The Board should note that an earlier application for the development, approximately 100 metres west of the subject site, was submitted to the PA (under ref. 23/4031) and was later withdrawn after a further information request. The Applicant states that the application subject of this appeal was submitted in response due to a request by the landowner to relocate the structure.

Site Justification

7.3. It is stated that the Applicant currently transmits from the Bandon Co-op feed mill site and has been requested to remove their equipment. I note that this mill site is located approximately 700 metres southwest of the subject site. It is stated that the subject site helps to retain the existing coverage of the target catchment area. The proposed structure will significantly improve Eir coverage and help eliminate coverage blackspots/weak areas which will make a positive contribution for the benefit of residents, businesses and social enterprises.

7.4. A number of alternative locations were assessed including a roof top location at Safe Keeping Ltd. within the town of Kinsale, an existing 30-metre-high lattice tower within the town, a 24-metre-high monopole structure in Clonleigh southeast of the site and a telecommunications tower in Garraha southeast of the site. These locations were discounted due to the sites' only providing localised coverage, unsuitable coverage for the target area and inadequate lines of sight. Whilst I note the comments from the

Observers regarding alternative locations, I am satisfied that the Applicant has provided adequate justification to locate the telecommunications structure in this location and has provided an assessment of reasonable alternatives. Furthermore, I note that the planning authority (PA) did not refuse the application on this basis.

Visual Amenity

- 7.5. The PA's reason for refusal of the development relates to the visual impact of the structure on the high value landscape (HVL) designated area and on the scenic route S60. This scenic route is located approximately 700 metres east of the site. I note that the structure is to be 24 metres in height and be of a lattice type design. The Applicant states that the lattice design facilitates a greater amount of equipment to that of a monopole design. The appeal is accompanied by 6 no. photomontages, including photomontage view 6 which is taken from the scenic route east of the site. I note that the photomontages were updated at appeal stage and now correctly correspond with the relevant viewpoint.
- 7.6. Whilst I acknowledge the importance of high-quality telecommunications infrastructure for the town of Kinsale and environs in terms of supporting businesses and tourism, this should not be to the detriment of the landscape. I note that the development has been sited on an undeveloped greenfield site in the most elevated part of the area, i.e at an elevation of 80.8m ASL, and therefore within a sensitive site within a HVL and in close proximity to the scenic route S60, both designated under the Cork County Development Plan 2022-2028 (CDP).
- 7.7. I note that the site and proposed development will be exposed from viewpoints along the local road approximately 850 metres to the north of the site. However, I note that the PA's main concern was the visibility from the scenic route R-600 to the east of the site. I note that the elevation of the site is approximately 70 metres above the level of this scenic road to the east. I note the submitted photomontage, however, it is my view that the structure will be visible from this scenic route and will result in a significant alteration to the appearance of this area on approach to the town.
- 7.8. Notwithstanding Sections 8.15, 13.18 and objective ET 13-28 of the CDP and to the technical and economic arguments put forward by the Applicant, I have serious concerns with the proposed development. Due to the lattice type design of the structure, to the proposed height of 24 metres and to the siting of the structure in an

elevated and exposed site within a HVL and to its close proximity to the scenic route S60, it is my view that the proposed development would dominate the skyline when viewed from surrounding areas including from the S60 scenic route, would be unduly obtrusive and would be seriously detrimental to the visual amenities of the area. Therefore, I concur with the conclusions of the PA and consider that the proposed development contravenes objectives GI14-9, GI14-12, GI14-13, GI 14-14 and GI14-15 of the CDP.

Traffic Safety

- 7.9. I note the comments from the Observers regarding the traffic safety implications of the development on the laneway and wider road network. I noted the substandard nature of the laneway on the date of my site inspection in terms of width and surfacing. However, having regard to the low level of construction works associated with a development of this nature and to the short-term nature of the proposed works, I am satisfied that the development would not result in an adverse impact on traffic safety. I note that there would be no significant amounts of traffic movements associated with the operation of the development.
- 7.10. I acknowledge the points raised regarding the legal right of way to use the laneway for the purposes of the proposed development. I note that this issue was highlighted in submissions to the PA and the Applicant does not appear to have addressed this issue in the grounds of appeal. However, the Board should note that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land. Any further consents that may have to be obtained are essentially a subsequent matter and are outside the scope of the planning appeal. In any case, this is a matter to be resolved between the relevant parties, having regard to the provisions of Section 34(13) of the Planning and Development Act 2000, as amended.

Other Issues

- 7.11. I note the detailed comments from the Observers regarding health and safety concerns and the various articles referenced. However, the Board should note that, as described in Circular PL 07/12, planning authorities should be primarily concerned with the appropriate location and design of such structures and do not have the competence for health and safety matters which are regulated by other codes.

- 7.12. I note the comments from the Observers regarding the impact of the development on 'Lepers' Lane' and on the site of Tobhar na Lobhar. I note that there are no designated recorded monuments or built heritage assets located in close proximity to the subject site. It is my view that the development would not be significantly detrimental to historical assets in the area having regard to the short-term nature of the construction works and to the location of the construction works within an agricultural field at a significant distance from any designated sites. However, such concerns could be addressed by way of condition in the event of a decision to grant planning permission.
- 7.13. I note the comments from the Observers regarding the requirement for a landscaping plan as the high palisade fence is not in keeping with the area. As the north and east boundaries of the site are undefined, I am in agreement and therefore, I recommend that if the Board are minded to grant permission, a condition is attached for a landscaping plan to be prepared and agreed in writing with the PA.

Appropriate Assessment (AA) Screening

- 7.14. I note the Observers concerns regarding the impact of the development on biodiversity. The subject site is not located within a European Site. The nearest designated site is the Sovereign Islands Special Area of Conservation (SPA), which is located approximately 5.5km southeast of the subject site. The Qualifying Interest (QI) of this SPA is the Cormorant (*Phalacrocorax carbo*) [A017]. The Conservation Objective is to maintain or restore the favourable conservation condition of the bird species. Having regard to the distance to the SPA and to the substantial amount of agricultural lands between the subject site and the SPA, I am satisfied that no ex-situ effects will occur.
- 7.15. Having regard to the nature of the development, to the absence of any hydrological connection to any European Site and to the separation distance with regards to any other ecological pathways, I consider that the proposed development, individually or in-combination with other plans or projects, would not be likely to have a significant effect on any European Site, in view of the said sites' conservation objectives.

Material Contravention

- 7.16. I note that the PA's reasons for refusal state that the proposed development would materially contravene objectives GI 14-9, GI 14-12 and GI 14-14 of the CDP and thus materially contravenes the CDP. I also note that the Applicant bases the grounds of

appeal on Section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended. However, having regard to the general nature and text of these objectives, I am satisfied that a material contravention does not arise in this instance.

7.17. Notwithstanding this conclusion, I have assessed the development against the four criteria outlined under Section 37(2)(b) of the Planning and Development Act 2000, as amended, which is the criteria that allows the Board to grant permission in the event of a material contravention.

(i) The proposed development is of strategic or national importance

7.18. I consider that the proposed development is not of strategic or national importance.

(ii) There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned

7.19. I consider that there are no conflicting objectives or unclear objectives in the CDP, as the proposed development is concerned.

(iii) Permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government

7.20. Regional Policy Objective (RPO) 137 of the Regional Spatial Economic Strategy seeks to strengthen the continued delivery of high-speed, high-capacity digital and mobile infrastructure investment in the Region and strengthen cross regional integration of digital infrastructures and sharing of networks. The Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (July 1996) and Circular Letter: PL 07/12 support government policy on the roll out of a high-quality telecommunications service and provide guidelines on design and siting. Having regard to the contents of these documents, I do not consider that they would warrant an overriding of CDP policies and objectives regarding protection of the landscape.

(iv) Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan

7.21. The CDP was adopted in 2022 and having regard to the pattern of development in the area, I note that there are no permissions granted in the area for the erection of such infrastructure.

8.0 Recommendation

I recommend that permission is refused for the following reason.

9.0 Reasons and Considerations

1. Having regard to

(a) the guidelines relating to telecommunications antennae and support structures which were issued by the Department of the Environment and Local Government to planning authorities in July 1996, and associated Circular Letter 07/12, and

(b) the height, scale and location of the proposed development in a high value landscape area and close proximity to Scenic Route S60, both designated under the Cork County Development Plan 2022-2028,

it is considered that the proposed development would be visually obtrusive, would seriously injure the visual amenities of the area and would contravene objectives GI14-9, GI14-12, GI14-13, GI 14-14 and GI14-15 of the Cork County Development Plan 2022-2028. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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

Gary Farrelly
Planning Inspector

28th March 2024

Appendix 1 - EIA Pre-Screening

An Bord Pleanála Case Reference	318039-23			
Proposed Development Summary	Erection of 24 metre high telecommunications support structure, together with antennas, dishes and associated telecommunications equipment all enclosed by security fencing and extension to existing access tracks			
Development Address	Waters-Land North, Kinsale, County Cork			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>		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)	Conclusion
No	X			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: _____

Date: _____