



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319900-24

<b>Development</b>	18 metre mast with associated antennae, dishes, ground equipment and associated site works.
<b>Location</b>	Eircom Exchange, Kilcooley Way, Gortnahoe, Thurles, Co. Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	21739
<b>Applicant(s)</b>	Eircom Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refused
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Eircom Limited
<b>Observer(s)</b>	Michael Fogarty Martin Campion Catherine Campion
<b>Date of Site Inspection</b>	19 <sup>th</sup> December 2024

**Inspector**

Frank O'Donnell

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## **1.0 Site Location and Description**

### **1.1. Introduction**

- 1.1.1. The proposed development seeks permission to construct an 18-metre-high monopole telecommunications structure with antennae and associated equipment at an existing Eir exchange site in Gortnahoe, County Tipperary.

### **1.2. Site Location and Description**

- 1.2.1. The subject appeal site is located on the northern side of the L-2101 (Kilcooley Way) within approximately 154 metres to the southeast of the centre of Gortnahoe village. The site is located within a larger established EIR exchange site which includes an existing single storey EIR exchange building located c. 20 metres to the northwest. The site has a stated site area of 0.0036 hectares (36 sqm), is triangular in shape and its southern, northern and eastern site boundaries are defined by mature hedging and trees. There is no existing telecommunications mast located on the subject appeal site.
- 1.2.2. Access to the overall site is via an existing pedestrian entrance located along the southern roadside frontage to the west of the subject appeal site. There is an existing single dwelling and associated amenity space located on the adjacent site to the immediate northwest. On the opposite side of the public road, to the southeast, there is an existing housing development, Kilcooley Way, comprising 19 no. dwellings. The adjacent lands to the north are understood to be in community/ sports use. Separate adjacent lands to the immediate northeast appear to be in agricultural use.

## **2.0 Proposed Development**

- 2.1. The Proposed Development comprises the following:
  - Construction of an 18-metre-high monopole telecoms support structure with antennae, communications dishes, ground equipment and associated equipment. The new mast is proposed to be positioned approximately 20 metres to the east of the exchange building.

- The submitted plans show 3 no. antennae at the top of the monopole and 3 no. other operator antennae further below (6 no. in total). Each antenna is estimated to measure 2 metres in length and c. 375 metres in width.
- At ground floor level the drawings include:
  - a proposed Eir Mobile Cabinet (Model Huawei) (0.866 m X 0.815 m by 2.03 metres in height).
  - a future other operator cabinet (Model TBC) (1.168 metres in length, 0.793 metres in width/ depth and 1.65 metres in height).
- The Applicant proposes to share all existing structures with licensed operators.

### 3.0 Planning Authority Decision

#### 3.1. Decision

- The Local Authority issued a **Request for Further Information** on 14<sup>th</sup> July 2021, as follows:

1. *The Planning Authority has serious concerns in relation to the proposed location of the 18 metre high free standing communications structure adjacent to existing community and residential facilities and within the settlement of Gortnahoe. It is considered that there may be more appropriate locations in the village and/or wider area which have not been sufficiently investigated.*

*The Guidelines for Planning Authorities on Telecommunications Antenna and Support Structures the policy issued by the Department of the Environment and Local Government (DoELG) in 1996 supports the establishment and roll out of a national network of telecommunications antenna and structures to facilitate quality telecommunication service throughout the State.*

*Clustering of existing telecommunication apparatus is encouraged in the Guidelines as is co-location on sites already developed for utilities. In larger towns and city suburbs. It is recommended that operators*

*locate in industrial estates or in industrially zoned land. Commercial or retail areas, tall buildings, rooftops or other existing structures are preferable to construction of free-standing masts.*

*Further to the above, the guidelines state that free standing masts be located in a **residential area or near schools only as a last resort**, that such support structures are to be kept to a minimum and should be monopole.*

*The applicant is requested to address the above concerns and submit a justification for the proposed location which is not in line with preferred locations as per the Department Guidelines and to include an assessment of other possible new locations outside of settlements which are in line with Government Policy.*

- The Local Authority issued a **Decision to Refuse Planning Permission** on 31<sup>st</sup> August 2021 for the following 1 no. reason:
  1. *Policy TI14. Telecommunications of the South Tipperary County Development Plan 2009, as varied, states that the Council will facilitate proposals for masts, antennae and ancillary equipment in accordance with Telecommunications Antennae and Support Structure: Guidelines for Planning Authorities, DEHLG, 1996. Development proposals will be facilitated, where it can be established that there will be no significant adverse impact on the surrounding areas and the receiving environment, particularly in the following locations:*
    - (i) *Primary or secondary amenity areas or locations that would be detrimental to designated listed views.*
    - (ii) *Within significant views or settings of National Monuments of Protected Structures.*

*The Telecommunications Antennae and Support Structure: Guidelines for Planning Authorities 1996 recommend against locating freestanding telecommunication apparatus within or near small towns or villages. Commercial or retail areas, tall buildings, rooftops or other existing structures are preferable to the construction of freestanding masts. The*

*guidelines also state that freestanding masts be located in a residential or near schools only as a last resort.*

*The application site is located within Gortnahoe Village, on village centre zoned lands, adjoining residential areas and in close proximity to educational and sporting/recreational facilities. The proposed development would form a visually prominent and highly visible feature within Gortnahoe and would negatively impact on the visual amenities and character of the settlement.*

*The Planning Authority is not satisfied that there are no other suitable locations within the required radius which would provide adequate telecommunication.*

*The proposed development would, therefore, contravene Policy TI14: Telecommunications of the South Tipperary County Development Plan 2009, as varied, and the Guidelines for Planning Authorities on Telecommunications Antennae and Support Structures (DEHLG) 1996 and 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 **Local Authority Planner** recommended that a Request for Further Information be issued.
- Following receipt of the Response to the Request for Further Information, the **Local Authority Planner** acknowledged the Applicant's ownership of the site (Eircom Exchange) but also noted the site was located on lands zoned village centre and within close proximity from an existing Primary School (170 metres), existing Sporting/ Recreational Facilities (Community Fields) (20 metres), existing Community Hall (108 metres) and residential units (31 metres to the nearest dwelling). The Local Authority Planner considered the Telecommunication Guidelines (1996) recommend against locating free standing telecommunications apparatus within or near small towns or villages. Other alternative locations (e.g. Commercial/ Retail areas, tall buildings,

rooftops or other existing structures) are stated to be considered preferable to the construction of free-standing masts. It is stated that only as a last resort, as referenced in the guidelines, should free-standing masts be located in a residential area or near schools. Such support structures should be kept to a minimum and should be monopole. The proposed development is located in a small settlement which is characterised by low rise buildings. No consideration was given by the Applicant to brownfield/ greenfield/ forestry sites which may be suitable to accommodate the proposal. On this basis, the Local Authority Planner, is not satisfied that the proposal complies with the Telecommunications Antennae and support Structure: Guidelines for Planning Authorities 1996 and Policy TI14: Telecommunications of the South Tipperary Development Plan 2009, as varied. The Local Authority Planner recommended that permission be refused for 1 no. reason as per the Local Authority Decision issued on 31<sup>st</sup> August 2021.

#### 3.2.2. Other Technical Reports

- **District Engineer:** No objection is raised subject to 1 no. standard condition in relation to Surface Water.
- **Environment Department:** No response received.

#### 3.3. Prescribed Bodies

- **Irish Aviation Authority (IAA):** No requirement for obstacle lighting. This does not preclude the Local Authority from imposing any conditions it may require.

#### 3.4. Third Party Observations

- 3.4.1. A total of 112 no. Third Party Observations/ Submissions were received in opposition to the proposed development, mostly from local residents and residents in the wider community. The issues raised are similar to those referred to in the Local Authority Assessment and Decision and in the Observation submissions to the appeal. Additional concerns also include health and safety and property devaluation.
- 3.4.2. The said 112 no. submissions include the following:



- 1 no. Submission/ Observation from Jackie Cahill, TD.

## 4.0 Planning History

- None relevant.

## 5.0 Policy Context

### 5.1. National Planning Framework – Project Ireland 2040

- 5.1.1. Objective 24 - *'Support and facilitate delivery of the National Broadband Plan as a means of developing further opportunities for enterprise, employment, education, innovation and skills development for those who live and work in rural areas.'*

### 5.2. Development Plan

#### **Tipperary County Development Plan, 2022 to 2028**

- 5.2.1. The Tipperary County Development Plan, 2022 to 2028, came into effect on 22<sup>nd</sup> August 2022, subsequent to the Local Planning Authority decision on this application. Gortnahoe is identified as one of a total of 30 no. Service Centres in the County.
- 5.2.2. Chapter 4.0 of the Written Statement (Volume 1 of the Plan) relates to Settlement Strategy.
- 5.2.3. Chapter 6.0 of the Written Statement (Volume 1 of the Plan) relates to Supporting Sustainable Communities. Section 6.8 relates to Digital Connectivity and Innovation. With specific regard to telecommunications infrastructure, it is stated that
- *The Council recognises that there is a balance between facilitating the provision of mobile telecommunications infrastructure, and the need to protect residential, visual amenity and the natural and built environment. When considering proposals for telecommunications infrastructure, the Council will have regard to Telecommunications Antennae and Support Structure: Guidelines for Planning Authorities, DEHLG, 1996 (and any review thereof) and will seek to work proactively with the telecommunication industry during the development and deployment phase.*

5.2.4. Policy 6 - 6 is of relevance to the subject proposal and reads as follows:

- *6 - 6: Facilitate the sustainable development of telecommunications and digital connectivity infrastructure in line with Harnessing Digital, The Digital Ireland Framework (GoH, 2022) and in accordance with Telecommunications Antennae and Support Structure: Guidelines for Planning Authorities, (DEHLG, 1996), where it can be established that there will be no significant adverse impact on the surrounding areas and the receiving environment.*

5.2.5. Planning Objective 6 – K is also considered to be of relevance and reads as follows:

- (a) *Support the delivery of the National Broadband Plan and the Tipperary Digital Strategy 2018 – 2023 (and any review thereof), enable high-speed broadband and digital connectivity services to all businesses and householders in Tipperary, and to support innovation in the digital economy.*
- (b) *To support and enable enterprise and remote working opportunities, thereby strengthening settlements as places to live, and work through the ‘Smart Town’ and ‘Town Centre First’ concepts.*

5.2.6. Chapter 8.0 relates to Enterprise and Rural Development. Section 8.3 relates to Our Economic Strategy. Section 8.3.5 relates to Remote Working.

5.2.7. Volume 2 of the Plan relates to Settlement Guide and Settlement Plans. Section 21 specifically relates to Gortnahoe. A total of 11 no. Specific Objectives are provided in the Settlement Plan, including the following:

- *SO1: To seek the to ensure the delivery of sustainable neighbourhoods with an appropriate mix of house types, amenities and services as part of new residential development to cater for the housing needs of the community.*
- *SO2: To support and facilitate the provision of infrastructure for, and development of, cluster housing schemes in accordance with the ‘Design and Best Practice Guidelines for Cluster Housing Schemes in Rural Villages’.*
- *SO3: To encourage and support the development of local facilities and services to meet the needs of the local community.*

- *SO5: To facilitate the expansion of existing local services and businesses where appropriate and to facilitate the provision of further local employment opportunities in accordance with the proper planning and sustainable development of the area.*
- *SO11: To support the expansion of public infrastructure within the village.*

5.2.8. The subject appeal site, although located within the defined Settlement Boundary for Gortnahoe, is not ascribed any specific land use zoning. The lands to the rear/ north of the site are zoned for Amenity use.

5.2.9. Volume 3, Appendix 3 of the Plan relates to Landscape Character Assessment. The subject appeal site is located within Landscape Character Area (LCA 9) – Littleton Farmland Mosaic and Marginal Peatland. In terms of Landscape Capacity, LCA9 is stated to be of High Capacity and Low Sensitivity, Class 1, *i.e.*

*‘Change or Development generally acceptable as it may beneficially alter, enhance or reinforce landscape character and value (e.g. the landscape is robust in its character, undergoing change or the precedent for such and similar development is set and the landscape is capable of absorbing considerable change without detriment).’*

### 5.3. Guidelines/ Circulars

#### 5.3.1. Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities, 1996

The 'Guidelines for Planning Authorities on Telecommunications Antennae and Support Structures' (1996) set out government policy for the assessment of proposed new telecommunications structures ('the 1996 Guidelines'). The Guidelines state that the rapid expansion of mobile telephone services in Ireland has required the construction of base station towers in urban and rural areas across the country. This is an essential feature of all modern telecommunications networks. In many suburban situations, because of the low-rise nature of buildings and structures, a supporting mast or tower is needed.

Section 1.2 relates to National Policy Issues wherein it is stated that *‘fragile landscapes have to be treated sensitively, scenic views preserved,*

*archaeological/geological sites and monuments and buildings of historical and architectural interest protected and sacred areas respected.'*

Section 4.3 of the Guidelines refers to visual impact and considers that this is one of the more important considerations which have to be taken into account in arriving at a decision on a particular application. In most cases, the Applicant will only have limited flexibility as regards location, given the constraints arising from radio planning parameters, etc. Visual impact will, by definition, vary with the general context of the proposed development.

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

- a rural/agricultural area;
- an upland/hilly, mountainous area;
- a smaller settlement/village;
- an industrial area/industrially zoned land; or
- a suburban area of a larger town or city.

The Guidelines states that *'Whatever the general visual context, great care will have to be taken when dealing with fragile or sensitive landscapes, with other areas designated or scheduled under planning and other legislation, for example, Special Amenity Areas, Special Protection Areas, the proposed Natural Heritage Areas and Special Areas of Conservation and National Parks. Proximity to listed buildings, archaeological sites and other monuments should be avoided.'*

The Guidelines state that some masts will remain quite noticeable despite best precautions. It is further stated that *'local factors which have to be taken into account in determining the extent to which an object is noticeable or intrusive intermediate objects (buildings or trees), topography, the scale of the object in the wider landscape, the multiplicity of other objects in the wider panorama, the position of the object with respect to the skyline, weather and lighting conditions, etc.'*

Only as a last resort should free-standing masts be located within or in the immediate surrounds of smaller towns or villages. If such location should become necessary, sites already developed for utilities should be considered and masts and

antennae should be designed and adapted for the specific location. The support structure should be kept to the minimum height consistent with effective operation.

In the vicinity of larger towns and in City suburbs the Guidance recommends that operators should endeavour to locate in industrial estates or in industrially zoned land. The Guidance also recommends that some commercial and retail areas should be explored whether as rooftop locations or by way of locating 'disguised' masts. ESB substations are also identified as potentially suitable locations for antennae support structures.

The use of tall buildings or other structures in urban and suburban areas are stated to be always preferable to the construction of an independent antennae support structure.

Only as a last resort and if the suggested alternatives are either unavailable or unsuitable should free-standing masts be located in a residential area or beside schools. If such locations should become necessary, sites already developed for utilities should be considered, and masts and antennae should be designed and adapted for the specific location. The support structure should be kept to the minimum height consistent with effective operation and should be monopole (or poles) rather than a latticed tripod or square structure.

#### **5.3.2. DOECLG Circular Letter PL11/2020**

This circular relates to planning exemptions applicable to telecommunications works undertaken by statutory undertakers authorised to provide telecommunications services.

#### **5.3.3. DoECLG Circular Letter PL07/2012**

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 reiterates the advice in the 1996 Guidelines that planning authorities should not determine planning applications on health grounds and states the following in Section 2.6:

*'2.6 Health and Safety Aspects*

*The 1996 Guidelines advise that planning authorities should not include monitoring arrangements as part of planning permission conditions nor determine planning applications on health grounds.*

*This Circular Letter reiterates that advice to local planning authorities. Planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matters in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process'.*

5.3.4. It advises Planning Authorities to:

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

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

5.4.1. The site is not located within or adjacent to a Natura 2000 site. The nearest Natura 2000 sites are as follows:

- The Loughan's SAC (Site Code 000407), c. 6.6 km to the Northeast;
- River Barrow and River Nore SAC (Site Code 002162), c. 7.4 km to the Southeast.

## **5.5. EIA Screening**

- 5.5.1. 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 screening determination. Refer to Form 1 in Appendix 1 of report.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. 1 no. First Party Appeal was received from the Applicant on 8<sup>th</sup> September 2021. The Grounds of appeal can be summarised as follows:

- Coverage Blackspot

The proposal is to provide an installation for mobile and broadband cover in the area. The Applicant requires a site in Gortnahoe, the current sites in the wider area do not provide an adequate service. Current indoor coverage for the provider/ Applicant (Eircom) is patchy.

If permission is refused, the Applicant/ Provider (Eircom) will lose essential coverage. It would not be possible to secure an alternative site that satisfies the requirements of the Tipperary County Development Plan.

- No Alternative Locations

There are no existing telecommunications installations within a 2km radius of the subject appeal site. The nearest such existing telecommunications installation is at a site located c. 5.5 km to the east. There are no existing commercial structures in the area which can accommodate the required height of the proposed equipment.

- Site Selection

The subject appeal site was chosen as it is the only existing commercial site within the identified search area. The site is established as an existing communications installation in the area for more than 25 years. The proposals

will serve to upgrade the existing utilities installation at this location, will directly connect to existing infrastructure and will in turn offer fast speed internet broadband and mobile connectivity. The fibre connection means less equipment will need to be installed onto the telecommunications structure which in turn allows for a small structure to be constructed. A taller structure would be required if installed at a separate location. The installation also reduces the need for additional equipment containers and security fencing to be installed at the site. The siting of the proposed telecommunications structure at an existing site which has already been developed for utilities is consistent with the telecommunications guidelines. 3 no. precedent ABP cases are referenced, namely 308491-20, 307990-20 and 309665-21.

- Co-Location

An 18-metre-high structure was selected as the site has the potential to become a shared facility. Allowing co-location will serve to avoid the proliferation of telecommunications structures into the future, in the interests of visual amenity.

- Visual Impact

In order to reduce the visual impact a slimline monopole was selected as it would not be out of character, be visually obtrusive or form an incongruous feature in the landscape. The monopole is nondescript and not dissimilar in design to a lamp standard/ traffic pole, see Appeal ref. no. 309665-21. The height of the structure is required to provide a signal over the surrounding area. The facility has the potential to become a share facility. The views from which the proposed structure would be visible are intermittent and would not be detrimental to the overall amenity of the area which is consistent with the 1996 Guidelines. The Applicant has provided a series of photomontages which show the proposals will not have a significant visual impact. This is consistent with the view of the Board as per Appeal ref. no. 308491-20. The location of telecommunications structures in close proximity to residential areas is not uncommon, see Appeal ref. no. 307962-20.



- Impact in a Local context

Telecommunications is now regarded as the fourth utility service. The upgrade of the telecoms site at this location will serve to facilitate enhanced broadband coverage in the village and surrounding area, including those seeking to work from home. Schools will also typically benefit from improved broadband coverage.

- Other Matters

The South Tipperary County Development Plan, 2009, the National Broadband Plan and the National Spatial Strategy for Ireland all support the proposed development. The proposal will provide a strategically important and essential telecommunications to the area. The proposal should be permitted.

## 6.2. Planning Authority Original Appeal Response

- None

## 6.3. Observations

6.3.1. 3 no. Observations were initially received by the Board on 5<sup>th</sup> October 2021 to the Original Appeal, as follows:

- Martin Campion (Gortnahoe Tidy Towns)
- Catherine Campion (Gortnahoe Playground Group)
- Michael Fogarty (Gortnahoe Community Group)

6.3.2. Martin Campion (Gortnahoe Tidy Towns)

6.3.3. The main issues raised can be summarised as follows:

- The proposal is unsightly and will impede the future development of the village.
- No effort has been made by the Developer for alternative sites available in this area.
- The proposal will serve to distract the built and natural heritage of the village.

- The Tidy Towns Committee and its members promote environmentally sustainable practices. The proposals would adversely affect this aim.

6.3.4. Catherine Campion (Gortnahoe Playground Group)

6.3.5. The main issues raised can be summarised as follows:

- Serious visual implication for the playground where children congregate. The proposal would be out of character and would present a negative visual effect on the children using the playground some of whom have special needs.
- The proposal will serve to detract from the natural heritage of the village and will be visible on all approaches.

6.3.6. Michael Fogarty (Gortnahoe Community Group)

6.3.7. The main issues raised can be summarised as follows:

- The decision of the Local Authority to refuse permission should be upheld.
- It is acknowledged that the purpose of the proposed development is to address the Applicant's licensing requirements however it is considered that the site is poorly located and that the development will be achieved to the detriment of the established village amenities.
- The Request for Further Information issued by the Local Authority raised serious concerns in relation to siting of the proposal adjacent to community and residential facilities. It was considered there may be more appropriate locations within the village and the wider area which have not been sufficiently investigated.
- The Applicant's Response to the Request for Further Information contends that the subject site is the only viable site in the area and submits there are no alternative locations in the area. It is understood no communications took place between the applicant and any landowner in relation to potential alternative sites. This is supported by the wording of the Local Authority decision to Refuse permission.
- A number of alternative land parcels (5 no. in total) are presented which the Group consider have potential to fulfil the needs of the Applicant and the wider community. The listed landowners are stated to be willing to engage

with the Applicants. In the absence of an explanation from the Applicant as to why the selected sites are not viable options it is submitted that the guidelines are not being adhered to. The Applicant's financial obligations should not override the rights of the community.

- The existing site has created traffic issues in the past. No permission should be granted in the absence of adequate and safe off street car parking.

#### 6.4. Further Responses

- 6.4.1. Section 131<sup>1</sup> letters were issued by the Board on 4<sup>th</sup> July 2024 following previous legal proceedings. Responses from the Local Authority, the Applicant and one of the Observers (Gortnahoe Community Group) were received.
- 6.4.2. The Board then issued further Section 131 letters on 2<sup>nd</sup> August 2024. A Response was received from the Local Authority.
- 6.4.3. The Board then subsequently issued further Section 131 letters on 05<sup>th</sup> September 2024. A Response was received from Gortnahoe Community Group.
- 6.4.4. The following is a summary of the said Responses.

- **Local Authority Response received on 16<sup>th</sup> July 2024**

- 6.4.5. The main issues raised in the Local Authority Response received on 16<sup>th</sup> July 2024 can be summarised as follows:
- The Local Authority is satisfied, having regard to the grounds of appeal and the observations/ submissions received that the decision to Refuse permission was appropriate and in accordance with the proper planning and sustainable development of the area.
  - The Tipperary County Development Plan, 2022 to 2028 is now in force. Section 6.8 (Digital Connectivity and Innovation) and Policy 6-6 both specifically refer to telecommunications infrastructure.

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<sup>1</sup> Section 131 of the Planning and Development Act, 2000, as amended – Power of the Board to request submissions or observations.

- The following is noted from the Grounds of Appeal:
  - The 1996 Guidelines recommend against the location of free-standing telecommunications structures within or near small towns or villages. More preferable locations include commercial or retail areas, tall buildings, rooftops or other existing structures. Only as a last resort should free standing masts be located in a residential area or near schools and such support structures should be kept to a minimum and should be of monopole design.
  - The improvement in coverage arising as a result of the proposed development must be balanced against the appropriateness of the proposal in terms of visual impact.
  - The proposal will be located on village centre lands within a small village settlement which is characterised by low rise buildings.
  - Brownfield/ Greenfield/ forestry sites were not given any consideration as to their potential suitability to accommodate the proposed development. It is noted however that existing facilities and commercial sites within the radius were considered.
  - In this regard, the applicant has not demonstrated compliance with the 1996 Guidelines and Policy 6-6 of the County Development Plan (2022 to 2028) particularly in respect of the identification and consideration of alternatives. The Applicant has not suitably demonstrated the subject site is the last resort.
  - The Local Authority, in refusing permission, acknowledged that the Guidelines do not preclude the siting of a free standing mast within a village, such as the subject proposal, but instead that they require the Applicant to demonstrate the consideration/ dismissal of all other site alternatives. The Local Authority does not consequently consider the proposals represent a Material Contravention of the Plan.
  - The Board is respectfully requested to uphold the decision of the Local Authority and refuse permission.

- **First Party (Applicant) Response Submission received on 19<sup>th</sup> July 2024**

6.4.6. A Further First Party (Applicant) Submission was received by the Board on 19<sup>th</sup> July 2024. For the most part, the submission repeats the planning case presented in the Applicant's initial planning report and the First Party Appeal. Additional information is provided under the following headings as summarised below:

- Site Location/ Proposed Development
  - The closest house is 60 metres to the west. Other houses on the opposite side of the road are 35 metres from the proposed structure. Landscaping mitigation is proposed. There is an existing fibre connection on site which allows for the construction of a smaller, slimmer structure with less requirement for additional equipment on the structure. Other locations would need to house additional equipment and would result in a bulkier, taller structure akin to a lattice tower, and other installations including an access track, equipment containers and security fencing. The existing fibre connection negates the need for road opening works and associated disturbances. The proposals adheres to Development Plan Policy and National Guidelines. The proposals will provide vital communications serves to the area and will facilitate co-location.
- Coverage
  - Owing to the nature of the surrounding land it would not be possible to secure an alternative site that satisfies the Development Plan requirements.
- Visual Impact
  - The visual impact of a communication structure will vary with the general context. A slimline monopole structure was selected in order to reduce visual impact. The proposals, in terms of design and scale, would not be out of character or an incongruous feature in areas such as the subject appeal site. The monopole structure is nondescript and comparable to typical lighting standards or traffic lights, see appeal ref. no. 309665-21. The height of the structure at 18 metres is based on the Radio Engineers requirements and allows for co-location. The proposed development will not have a significant visual impact in the area. The structure however may not intrude overly on the

general view or prospect. This is consistent with the decision under Appeal ref. no. 308491-20. The Applicant has provided a Landscaping Screening Plan.

- Alternative Locations

- The closest existing mast facility is c. 5.5 km to the southwest. There are no other existing telecommunication facilities within the search area (2km). Installations need to be within 500 metres of the target area. The subject site was selected as it is the closest commercial installation within 500 metres of the required coverage area. The proposal makes efficient use of existing infrastructure. Other locations would need to house additional equipment and would result in a bulkier, taller structure akin to a lattice tower, and other installations including an access track, equipment containers and security fencing.

- Traffic and Parking

- It is anticipated that the proposed development, once constructed, would result in an increase in 2 no. van movements to the site per annum.

- **Observers Response Submission (Gortnahoe Community Group, C/o FP Logue Solicitors) received on 22<sup>nd</sup> July 2024**

6.4.7. The main issues raised in the Observation can be summarised as follows:

- Chronology and Relevant Background

- The previous decision of An Bord Pleanála (ABP-311343-21) on 27<sup>th</sup> January 2023 was quashed by the High Court on 13<sup>th</sup> May 2024. The Board decision was based on the Tipperary County Development Plan, 2022 to 2028 whereas the decision of TCC to refuse permission (1 no. reason) was based on the previous development plan.
- A submission was made to the Board by Michael Fogarty (Gortnahoe Community Group) on 30<sup>th</sup> September 2021 which noted there was no objection in principle to a mast in the area but that the subject site was sited in inappropriate location. The applicants' Response to Further Information was

considered in the said submission to have been weak as it found no suitable alternative locations. The FI Response stated the Applicant required a site within 1 km of the village to provide the level of coverage required within the village. It was further stated that the subject appeal site was selected as it was the only viable commercial site within the search area. Reference was then made to 2 no. ABP decisions, ref. 308491 and 307990 where the Board, in granting permission, had relied upon the last resort test of the Guidelines and the preference of utilising sites where same was satisfied.

- The clear implication is that the last resort test had been satisfied as the developer stated that all other 'viable commercial sites' had been discounted. The Local Authority Planner did not accept this argument and considered that other potentially viable options had not been explored. Permission was refused by the Local authority for 1 no. reason. We agree with the Local Authority Assessment. The Developer only considered Commercial Sites which are not applicable in a rural area under the Guidelines.
- The refusal reason should have referred to a material contravention of the Plan and not solely a contravention. Material Contravention is ultimately a decision which is subject to determination by the Courts (Redmond v ABP [2020] IEHC 151, Four Districts Woodland Habitats Group and Ors. V ABP [2023] IEHC 335.
- A reasonably intelligent person would have found that the proposal was not a last resort and that the development of a mast in such an instance would represent a material contravention of the Plan. As the Council did not consider the proposed development to represent a material contravention means that the case before the Board should have been, but is not, constrained by the provisions of Section 37 2) b) of the 2000 Act. This has tainted the Objectors submission/ appeal. Where the Board decide to Grant permission, the Objector reserves the right to seek an extension of time to challenge the decision as they did in the previous JR proceedings.
- The Board inspector previously and incorrectly accepted the Applicants argument in respect of an examination of alternative sites. If the only way to

determine a factual inaccuracy is to hold an oral hearing then the Board must exercise its discretion to do so.

- The 5 no. alternative sites identified in the appeal submission remain available. The Landowners have not been approached by the Developer. These sites comply with Section 4.3 of the Guidelines, i.e. located outside the village and away from houses and entirely suitable from a technical point of view.
- The Board conceded the judicial review on 12<sup>th</sup> April 2024 and stated that in light of Core Ground 1 that *'it failed to provide adequate reasons as to how it considered the Proposed Development to accord with the 'Telecommunications Antennae and Support Structure Guidelines.'* On this reassessment of the file, for the reasons set out below, the Board is required to refuse permission.
- Basis for Objection
  - Article 22 of the Planning & Development Regulations: The subject appeal site is contained within folio ref. no. TY2553 and is in separate third-party ownership. The developer indicates on the planning application form that they were the legal owners of the lands. As per Article 22 of the Regulations a valid planning application must be made by the owner of the lands. Where this is not the case, the written consent of the owner must be obtained, see Supreme Court Case *Frescati Estates v Walker* [1975] IR 177. Consent of the legal owners to the making of the planning application was not obtained. The validity of a planning application was challenged by an objector in *McCallig v An Bord Pleanála* [2013] IEHC 60. Both the Developer and the Board had sought to defend the proceedings on the basis that the Board was not entitled to look behind the initial decision of the Planning Authority to validate the planning application. This was not accepted by Herbert J. as it was noted from an earlier case (*Hynes v ABP* (Unreported, High Court, McGuinness J, 10<sup>th</sup> December 1997) it was held by the High Court that An Bord Pleanála could not simply ignore a clearly invalid planning application. It was held that the Board did not have jurisdiction to adjudicate upon an application which would have be considered invalid having regard to the criteria set out in the



aforementioned Supreme Court case (Frescati). In Sweetman v. An Bord Pleanála [2021] IEHC 16, the requirement of the Board to determine issues of consent, de novo, was reiterated by Hyland J. There is therefore a duty on behalf of the Board to be autonomous in its adjudication on matters of the validity of a planning application before it, including as in the subject case, upon remittal of an appeal by the High Court. It is clear that the planning application is invalid.

- Zoning
  - The subject appeal site lies within the development plan boundary for Gortnahoe. The lands to the north are zoned for amenity use. Specific Objective (SO2) supports the provision of infrastructure for and the development of cluster housing schemes. The Council objective is for the consolidation of the core of the village, the provision of housing and community facilities. The Board has an obligation to decide the application having regard to the proper planning and sustainable development of the area. This includes an element of forward planning. In this regard, the proposal would be inconsistent with the specific objective of the development plan in terms of the consolidation of the village for housing. The proposal effectively serves to sterilise a considerable area of land suitable for housing which would be proximate to the proposed mast. There would be no market for such housing.
- Compliance with Section 4.3 of the Antenna Guidelines and the Development Plan
  - The Tipperary County Development Plan, 2022 to 2028, requires compliance with the Guidelines, see Objective 6.6. Non-compliance with the Guidelines, represents a contravention of the Development Plan. Such contravention is likely to be material.
  - Section 4.3 of the guidelines relates to visual impact in a rural area and refers to forestry plantations and suitable locations for towers and masts. It is further recommended that '*only as a last resort should free standing masts be located within or in the immediate surrounds of smaller towns and villages*'.
  - Section 4.5 of the guidelines refers to Sharing Facilities and Clustering.

- The previous Inspector incorrectly accepted the Developers justification of the subject commercial site as the relevant alternative to be considered. Under the Guidelines, commercial sites are only relevant in larger towns and cities and not a rural area such as the subject appeal site. Gortnahoe is a smaller town/ village. In order to apply the last resort test alternative sites must first be discounted such as surrounding forestry lands and agricultural lands. The Developer was provided with 5 no. alternative sites/ locations by the Objector. The respective landowners have not been approached by the Developer.
- Under the Guidelines there is an obligation upon the developer to demonstrate why that the choice of the subject site is preferable to the alternative sites or indeed other sites yet to be identified. The Developer has not done this and has not therefore complied with recommendations contained in Section 4.3 of the Guidelines. Existing utility sites cannot be considered until the test of last resort is first satisfied.
- The proposed development is contrary to Objective 6.6 of the Development Plan and by its nature in planning terms is material. Reference is made to *Jennings v An Bord Pleanála* [2023] IEHC 14 in terms of what constitutes a material contravention. It is submitted that the proposal is a material contravention of the development plan as the proposed development is non-compliant with the provisions of the Guidelines. It is submitted that the only option available to the Board is to refuse permission.
- Under Appeal Ref. No. 318262 it is noted that the Board refused permission for a similar proposal on the basis of the proposed being considered contrary to Section 4.3 of the Guidelines and Policy ICT 04 of the Cavan Development Plan 2022 to 2028. That decision followed a similar High Court Order quashing an earlier An Bord Pleanála decision to grant permission for the same proposal following a judicial review of that decision. The Board is requested to apply the same consistent approach in respect of the subject proposal.

- **Local Authority Response received on 16<sup>th</sup> August 2024**

6.4.8. The main issues raised can be summarised as follows:

- Having reviewed the submission of 19<sup>th</sup> July 2024 (Delmec Engineering for and on behalf of the Applicant), the Local Authority consider the reasons for refusal set out under planning reg. ref. no. 21739 have not been addressed.
- Section 5.2 of the Appeal Submission dated 19<sup>th</sup> July 2024 relates to Justification of the Exchange Location and refers to a range of 500 metres per sector for the sector antennae used to provide high speed services. It is stated that the installation needs to be within 500 metres of its target coverage area. There is no technical justification for this statement set out. This would mean if such a standard were to be applied this would result in a mast every 500 metres within urban areas.
- In conclusion, the Board is requested to uphold the decision of the Local Authority and refuse permission.

- **Observation submission received from Gortnahoe Community Group (c/o FP Logue Solicitors) on 22<sup>nd</sup> September 2024**

6.4.9. The main issues raised in the Observation can be summarised as follows:

- Submission is in response to the First Party Response received on 19<sup>th</sup> July 2024. The previous decision of An Bord Pleanála was conceded on the basis of the Board having failed to provide adequate reasons as to how it considered the proposal accorded with the Telecommunication Guidelines, 1996. The First Party Submission (received by the Board on 19<sup>th</sup> July 2024) similarly fails to demonstrate how the proposed development complies with the Guidelines, particularly in relation to the assessment of alternative sites and the application of the 'last resort' test. There is no assessment of alternative sites outside the village as offered to the Developer by local landowners.
- The justification provided by the First Party in respect of the suitability of the subject appeal site over other alternative sites does not accord with the Guidelines. Alternative sites must first be assessed prior to proposing a mast

on an existing utility site in a small town or village. The guidelines do not allow alternative sites to be ruled out on the basis of them being less obtrusive in appearance.

- It appears the developers want to locate the proposed development on the subject appeal site as they own it and it would be more economical for them to do so. This is not in accordance with the Guidelines. The Board is respectfully requested to refuse permission.

## 7.0 Assessment

### 7.1. Introduction

7.1.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider the main issues in this appeal are as follows:

- Development Plan/ Telecommunications Guidelines
- Coverage/ Site Selection/ Co-Location/ Visual Impact
- Zoning/ Future Orderly Development
- Legal Interest/ Consent/ Validity of the Planning Application **(New Issue)**
- Other Matters
  - *Material Contravention*
  - *Health and Safety*
  - *Precedent Cases*
  - *Devaluation of Property*
  - *Traffic Impacts*

## 7.2. Development Plan/ Telecommunications Guidelines

- *Tipperary County Development Plan, 2022 to 2028*

7.2.1. The decision of the Local Authority to refuse planning permission dated 31<sup>st</sup> August 2021 refers, inter alia, to Policy TI14: Telecommunications of the South Tipperary County Development Plan, 2009 (as varied). The Board will note that the South Tipperary County Development Plan, 2009 (as varied), has now lapsed and has since been superseded by the Tipperary County Development Plan, 2022 to 2028, which came into effect on 22<sup>nd</sup> August 2022. The latter development plan is applicable in this case.

7.2.2. Section 6.8 of the Tipperary County Development Plan, 2022 to 2028, relates to Digital Connectivity and Innovation and supports the development of high-speed communications networks, particularly in rural areas. When assessing proposals for telecommunications infrastructure, it is stated that the Council '*will have regard to*' the Telecommunications Guidelines, 1996. The relevant Development Plan policy for telecommunications proposals is Policy 6 – 6 which states, inter alia, that it is the policy of the Council, to facilitate the sustainable development of telecommunications and digital connectivity infrastructure... in accordance with '*Telecommunications Antennae and Support Structure: Guidelines for Planning Authorities, (DEHLG, 1996), where it can be established that there will be no significant adverse impact on the surrounding areas and the receiving environment.*' Therefore, in order for a proposal to comply with Policy 6 – 6, there is a requirement to accord with the Guidelines.

- *Telecommunications Guidelines, 1996*

7.2.3. Section 4.3 of the Guidelines relates to Visual Impact and notes that this will vary depending on the type of location and setting. Although the subject appeal site is located within a smaller settlement/ village, it is not proximate to, or located within, a fragile or sensitive landscape as described in the Guidelines nor indeed is it proximate to any listed buildings, archaeological sites or other identified monuments. I do not therefore consider the subject appeal site to be in a particularly fragile or sensitive location.

7.2.4. The guidelines clearly state that '*only as a last resort should free-standing masts be located within or in the immediate surrounds of smaller towns or villages.*' In my

view, as the Applicant has selected the subject site as a 'last resort', there is an onus upon them to first clearly demonstrate that this is in fact the case and, in doing so, to suitably justify the choice of the subject site over all other potential options in the area.

- 7.2.5. A further requirement of the Guidelines, as set out in Section 4.3, is that only as a last resort and where alternatives suggested are either unavailable or unsuitable should free standing masts be located in a residential area or beside schools. The Board will note the nearest dwellings to the proposed mast location are positioned approximately 60 metres to the immediate northwest and 35 metres to the southwest respectively. The Board will further note the nearest school building to the site is located approximately 182 metres to the southwest, namely Gortnahoe National School and that there is also an existing Pre-School building located approximately 104 metres to the northwest of the subject appeal site. I do not consider the subject appeal site to be located within a residential area or to be located beside a school.
- 7.2.6. Having regard to the proposed separation distances, together with the proposed landscaping measures, I do not consider the proposed development will serve to impact negatively upon the established residential amenities of nearby residential properties or the established amenity of any local school. Notwithstanding, and as noted further above, in order to adhere to recommendations contained in the Guidelines, the Applicant is obliged to first satisfy the 'last resort' test.

### 7.3. **Coverage/ Site Selection/ Co-Location/ Visual Impact**

- *Coverage Blackspot*

- 7.3.1. The case presented in the Appeal by the Applicant in terms of the extent of the existing Eir service in the area is noted. It is accepted that the proposed development would serve to improve indoor voice and high-speed data services in the village and surrounding area. A refusal of permission in this instance would not, in my view, serve to result in the loss of existing coverage.

- *Site Selection*

- 7.3.2. While I note the Applicant's justification for the choice of the site, which is centred around its current and established use as an Eir Exchange/ Utility site and the proximity to and availability of existing infrastructure including a fibre connection on

the site, I also note that part of the justification is stated to be '*beneficial to the Operator, due to the capital costs involved in developing new infrastructure.*' Such capital costs are not, in my view, a relevant planning consideration.

- 7.3.3. Notwithstanding the merits of the subject appeal site and as noted further above, the Applicant has failed to comply with the Guidelines in terms of site selection/ last resort principle in smaller towns and villages.
- 7.3.4. The Applicants Network Design Document, lodged as part of the planning application documentation, refers to the following typical cell radii for 3G networks:
- 150m to 350m for cells in urban areas
  - 800m to 1,000m for cells in suburban areas
  - 2km to 5km for cells in rural areas
- 7.3.5. The Applicants initial Appeal submission refers to a range of 1 km for the proposed sector antenna, *i.e. 'the sector antenna used in providing these high-speed services have a range of 1 km per sector.'* The Applicant states in the latest appeal submission that installations need to be within 500 metres radius of its target coverage area and that the subject site was selected as it was the closest commercial installation within 500 meters of the required coverage area.
- 7.3.6. The stated respective distances of 1km and now 500 metres are consistent with the above referenced distances for suburban areas/ urban areas from the Applicants Network Design Document. The Network Design Document appears to be a brief generic document which is not site specific. In my view there is no expert evidence attached to the case file which would ground the assertion of the developer that the range of the antennae is limited to 1 km or indeed 500 metres, as per the latest appeal submission from the Applicant.
- 7.3.7. I note the network coverage area shown in the latest appeal submission from the Applicant, see Figure 4, shows a coverage area which is over 5 km in diameter (2.5 km in radius). This coverage area is the same as shown in the Applicant's previous submissions, namely the initial planning report and the initial Appeal submission. It would appear to me therefore that there is an inconsistency between the stated revised range of the antennas at 500 metres and the submitted coverage maps.

- *Co-Location*

7.3.8. The principle of Co-Location is set out in Section 1.2 of the Guidelines. It is accepted that as there are no other existing telecommunications installations within the 2 km search ring there are no opportunities for the Applicant to Co-Locate equipment on such an existing installation. The Applicant's proposals to facilitate Co-Location at the proposed development site are noted.

- *Visual Impact*

7.3.9. I note the Applicant submitted a number of photomontages as part of the planning application documentation and concluded, in summary, that the proposed development, whilst visible from some views would not be detrimental to the overall amenity of the area. The issue of Visual Impact does not appear to have been expressly referenced by the Local Authority until the decision to refuse permission was issued on 14<sup>th</sup> July 2022. It is stated in the 1 no. reason for refusal that the proposal '*...would form a visually prominent and highly visible feature within Gortnahoe and negatively impact upon the visual amenities and character of the settlement.*'

7.3.10. I note that both the Applicant's initial appeal submission and subsequent submission do not elaborate further from their previous opinion in respect of Visual Impact.

7.3.11. As noted further above, the subject appeal site is not, in my view, situated in a particularly fragile or sensitive location. There are no protected views of relevance identified in the Development Plan and the site is located within a Landscape Character Area (LCA 9 - Littleton Farmland Mosaic and Marginal Peatland) which is stated to be of high landscape capacity and low sensitivity, Class 1. The site is located on an approach road to the village from the east and is over 150 metres from the village centre to the northwest. The site is therefore, in my view, somewhat peripheral relative to the centre of the village. The nearest and most sensitive receptors to the proposed mast are the nearest residential dwellings located 60 metres to the northwest and 35 metres to the southwest respectively.

7.3.12. As discussed further above, Section 4.3 of the Guidelines relates to Visual Impact where it is recommended that proposals for free-standing masts located within or in the immediate surrounds of smaller towns or villages are deemed to be acceptable '*only as a last resort.*' Although the setting of the subject appeal site is not, in my



view, in of itself particularly sensitive in visual terms, the said last resort principle to the suitability of sites, such as the subject appeal site located within a village, implies a higher visual priority for such sites compared to other potentially viable sites in the area.

- 7.3.13. The Applicant's assessments to date solely focus upon existing telecoms sites and commercial sites within the search ring and do not include, for example, brownfield or indeed greenfield sites in the wider locality including those outside the extents of the village. In the absence of such a clear and definitive assessment, I am not satisfied that it has been demonstrated that the subject appeal site, as presented, is indeed the last resort as purported to be the case by the Applicant. In this regard, it is my opinion that the Applicant has therefore not satisfied the 'last resort' test set out in the Guidelines for the location of free-standing masts within or in the immediate surrounds of towns and villages.
- 7.3.14. In other words, in order to conclude that the subject appeal site is an optimum site in terms of Visual Impact, the Guidelines place the onus upon the Applicant to demonstrate that the site is indeed the last resort. As it is my view that this has not been suitably demonstrated in this case, I cannot say with certainty that the subject appeal site represents the last resort and is therefore an optimum site from a visual perspective.
- 7.3.15. It should be noted that the observation submissions refer to a number of potentially viable/ alternative sites in the general area. The latest submission received from the Applicant on 19<sup>th</sup> July 2024 has dismissed any Alternative Locations (see Section 5.0). It would seem to me there is no express examination of the other 'alternative sites' presented save for there being no existing telecommunications installations within the 2 km search area of the existing site or indeed any alternative site location within the stated revised 500 metre range of the intended target area. The Applicant states that *'an alternative site location would require a taller and bulkier structure to accommodate further equipment which would be a lattice type structure and require equipment containers along with security fencing and access track.'* I do not agree this to necessarily be the case and in the absence of an appropriate examination of the alternative sites presented, I am not satisfied that the Applicant has fully exhausted the viability of all alternative sites or indeed suitably justified the choice of the subject appeal site as a 'last resort.'

#### **7.4. Zoning/ Future Orderly Development**

- 7.4.1. As per the Gortnahoe Land Zoning Map, the subject appeal site is located within the defined settlement boundary and is not ascribed any specific land use zoning. The lands to the immediate north are zoned for Amenity use. I note that under the previous South Tipperary County Development Plan, 2009, the subject appeal site was ascribed a 'Town Centre' zoning and that adjacent lands further to the east were zoned 'Low/ Medium Density Residential'. In my view, should the adjacent lands further to the east be proposed for residential development into the future, I do not consider the presence of a mast, as proposed under the subject appeal, would significantly impact upon proposals for future residential development at that said site. I consider that adequate separation distances can be observed in this regard, should this scenario arise.
- 7.4.2. A concern is raised in the initial third party submissions that the proposed development, if permitted, will result in a local population decline. There is however, no evidence presented in this regard. In the absence of same, I do not accept the proposed development, if permitted, would directly result in any significant local population decline.

#### **7.5. Legal Interest/ Consent/ Validity of the Planning Application (New Issue)**

- 7.5.1. The issue of legal interest, consent to make the planning application and the subsequent validity of the planning application is raised in the Third-Party Submission received for and on behalf of Gortnahoe Community Group on 22<sup>nd</sup> July 2024. These issues are not understood to have been raised previously and are stated to have only come to the attention of the Third Party since the application was made to the Council and the appeal to the Board.
- 7.5.2. I note, as per Q. 9 of the Application form submitted with the planning application, that the Applicant (Eircom Limited) is indicated to be the owner of the site. The Third-Party submission indicates that the subject folio, ref. TY2553, is in the ownership of 4 no. individual parties/ persons. There would therefore appear to be some uncertainty regarding ownership of the site. These matters were not circulated to the First Party for comment.
- 7.5.3. Article 22 of the Planning and Development Regulations, 2001 to 2023, relates to the Content of planning applications generally. Article 22 2 (g) (i) requires the written

consent of the owner to make an application in the case where the applicant is not the legal owner of the land or structure concerned. No letter of consent to make the planning application is attached to the appeal file or forms part of the documentation received by the Board from the Local Authority.

- 7.5.4. I note the provisions of Section 131 of the Planning and Development Act, 2000 to 2023, where it is at the discretion of the Board to request submissions or observations in respect of an appeal. The Board could decide to seek further submissions or observations from the respective parties in relation to this matter. However, having regard to the other substantive reason for refusal set out below, it may not be considered necessary to pursue the matter.

## 7.6. Other Matters

- *Material Contravention*

- 7.6.1. As noted further above, it is my view that the Applicant has not suitably adhered to recommendations contained in the Guidelines in terms of the justification of the choice of the subject site as a last resort within a smaller town or village. I note the wording of Policy 6 – 6 and I am satisfied that that the proposed development, as presented, contravenes this said policy. I agree that once a contravention is found, a question then arises as to whether such contravention is material in planning terms.
- 7.6.2. The 1 no. reason for refusal, as issued by the Local Authority on 31<sup>st</sup> August 2021, does not refer to a material contravention of the previous 2009 Development Plan but instead states, inter alia that ‘...*the proposed development would, therefore, contravene Policy TI14L Telecommunications of the South Tipperary County Development Plan 2009, as varied, and the Guidelines for Planning Authorities on Telecommunications, Antennae & Support Structures(DoELG) 1996 and would, therefore, be contrary to the proper planning and sustainable development of the area.*’
- 7.6.3. The issue of Material Contravention is raised in one of the Observation Submissions (Gortnahoe Community Group). It is argued that the proposed development, as presented, materially contravenes development plan Policy 6 - 6.
- 7.6.4. I note the submission from the Local Authority dated 16<sup>th</sup> July 2024 wherein it is stated that ‘*in refusing permission for the proposal, the Planning Authority*

*acknowledged that the Guidelines do not preclude the location of a freestanding mast in a village location such as the present one at Gortnahoe, but rather that they require the applicant for permission to demonstrate that all other site alternatives have been considered and were considered by the applicant as unavailable or unsuitable. Consequently, the Council does not consider the proposal constitutes a “material contravention” of the Development Plan.’*

- 7.6.5. I note the extent of local opposition to the proposed development as evidenced, in the first instance, by the 112 no. submissions received by the Planning Authority. I consider the grounds upon which the residents oppose the proposed development to be substantial in nature.
- 7.6.6. I note the existing established use of the subject appeal site as an Eir Exchange/ utility site. In my view the principle of providing additional telecommunications infrastructure at the subject appeal site would not be inconsistent with the established use of the appeal site. I do not consider the proposed development represents a change of use or a significant intensification in the established use of the subject appeal site. I consider the proposed development, as presented, to be consistent with Specific Objectives SO1, SO2, SO3, SO5 & SO11 of the Gortnahoe Settlement Plan presented in Volume 2 of the Tipperary County Development Plan, 2022 to 2028. The subject appeal site is not ascribed any specific zoning as had been the case in the previous development plan where it was zoned town/ village centre.
- 7.6.7. Having regard to the characteristics of the subject appeal site, the subject proposal and its relatively small scale and the aforementioned contravention of policy 6 - 6 of the development plan, the fact that the decision of the Local Authority, which was made under the previous Development Plan, was not based on a material contravention of that said Development Plan, I consider such contravention to be immaterial. In other words, it is my opinion that the proposed development, as presented, does not materially contravene the development plan.
- 7.6.8. The Board should not, therefore, consider itself constrained by Section 37(2) of the Planning and Development Act.

- *Health and Safety*

7.6.9. In relation to the potential Health Impacts of the proposed development the Board will note the provisions of Circular Letter PL 07/12, Section 2.6, in particular, where it is stated that '*planning authorities .... do not have competence for health and safety matters in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process.*'

7.6.10. The Commission for Communications Regulation (ComReg) are responsible, at a National level, for compliance with emission limits and a licence to provide services is subject to compliance with strict emission controls. The issue of compliance with emission limits will be evaluated under a separate legal code and thus need not concern the Board for the purpose of this appeal.

- *Precedent Cases*

7.6.11. While the cases referenced in the appeal are noted, all appeal cases are assessed and determined on their own merits having regard to the sensitivity of the receiving environment and the specifics of the proposed development. The subject site is unique, is located in a small village (under 400-person population), and has a different setting and context to that of the referenced cases. The cited cases, therefore, in my opinion, are not of direct relevance to the subject case.

- *Devaluation of Property*

7.6.12. The issue of a Devaluation of Property arising as a result of the proposed development is raised in a number of the submissions received by the Local Authority. Five of the submissions are accompanied by individual letters from Auctioneers/ Valuers (2 no. separate Auctioneers/ Valuers). The referenced properties are all located within the general proximity of the subject appeal site. I note the content of the said valuations, however, as noted further above, I am satisfied that the proposed development, as presented, is acceptable in terms of impacts on surrounding residential amenities.

- *Traffic Impacts*

7.6.13. It is anticipated that the proposed development is unlikely to generate significant traffic movements during the operational phase. I do not consider the issue of traffic impacts to be a significant issue.

## **8.0 AA Screening**

8.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located not located within or adjacent to any European Site. The closest European Site, part of the Natura 2000 Network, is the Loughan's SAC (Site Code 000407), located c. 6.6 kms to the Northeast from the proposed development.

8.2. The proposed development comprises the erection of an 18 metre mast with associated antennae, dishes, ground equipment and associated site works.

8.3. Having considered the nature, scale and location of the proposed development, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.

8.4. The reason for this conclusion is as follows:

- The small-scale nature of the development.
- The location of the development in a serviced urban area, distance from European Sites, the urban nature of intervening habitats and the absence of ecological pathways to any European Site.

8.5. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## 9.0 Recommendation

9.1. I recommend that permission be REFUSED for the following reason.

## 10.0 Reasons and Considerations

While the Board acknowledges that the site is an existing utilities site, the applicant has not clearly demonstrated by way of an assessment of alternative sites, including brownfield and greenfield sites in the area, that the subject appeal site, located within the village of Gortnahoe, is a last resort, as required by Section 4.3 of the Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996). As such the proposal is considered to be contrary to said Guideline and is considered to be contrary to Policy 6 – 6 of the Tipperary County Development Plan 2022-2028.

*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.*

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Frank O'Donnell  
Planning Inspector

5<sup>th</sup> March 2025

# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>	<b>ABP-319900-24</b>		
<b>Proposed Development Summary</b>	18 metre mast with associated antennae, dishes, ground equipment and associated site works.		
<b>Development Address</b>	Eircom Exchange, Kilcooley Way, Gortnahoe, Thurles, Co. Tipperary		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	<b>X</b>
		<b>No</b>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>			
<b>No</b>	<b>X</b>		
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	<b>X</b>		Proceed to Q4



4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes		N/a	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	X	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_