



An
Bord
Pleanála

Inspector's Report ABP-321921-25

Question

Whether the existing temporary telecommunications structure comprised of a 15m transportable monopole structure secured by 4 anchor bolts to 4 No. 2m x 2m x 1m removable concrete ballast blocks; & all associated antennas, dishes and ancillary ground-based equipment cabinets, situated within the construction site hoarding on a section of land at 80-82 Philipsburgh Avenue, is or is not development and is or is not exempted development.

Location

80-82 Philipsburgh Avenue, Fairview, Dublin 3

Declaration

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

0024/25

Applicant for Declaration

Independent Site Management

Planning Authority Decision

Is not exempted development

Referral

Referred by Independent Site Management

Owner/ Occupier Cabhrú Housing Association

Observer(s) None

Date of Site Inspection 28/03/2025

Inspector Gillian Kane

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1.0 Site Location and Description

- 1.1.1. The subject site is located on the eastern side of Philipsburgh Avenue, in the north Dublin suburb of Fairview. The site is currently under construction, having been cleared of all structures. There is a temporary portacabin / office on the eastern boundary. The site is bound on all sides by construction hoarding. The site is bound to the north by single storey residential properties and to the south by two storey residential properties with a lane that provides access to the car park and pitch & putt located to the rear of the site running along the southern site boundary
- 1.1.2. The telecoms structure the subject of this referral is located along the northern boundary.

2.0 The Question

- 2.1. Whether the existing temporary telecommunications structure comprised of a 15m transportable monopole structure secured by 4 anchor bolts to 4 no. 2m x 2m x 1m removable concrete ballast blocks; & all associated antennas, dishes and ancillary ground-based equipment cabinets, situated within the construction site hoarding on a section of land at 80-82 Philipsburgh Avenue, is or is not development and is or is not exempted development

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 10th February 2025 the Planning Authority issued a declaration stating that the development is not exempt for the following reasons and considerations:
 - 1 Having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000, as amended, Article 6 and 9 of the Planning and Development Regulations 2001, as amended, and Classes 16 and 31 of Part 1 of schedule 2 of these Regulations and the planning history of the site, the erection of a telecommunications structure with associated antennas, dishes and ancillary ground-based equipment cabinets at 80-82 Philipsburgh Avenue, Fairview, Dublin 3 is development and is not exempted development on the grounds that the Planning Authority is not satisfied that (i) the telecommunications structure and associated equipment in place is needed in connection with the development that is currently being carried out on site as is required under

Class 16, (ii) the telecommunications mast measures over 15m in height, the maximum allowable under Class 31(g) and has been in place for a time period substantially in excess of the maximum 16-week period allowable under the provisions of Class31(g)(c) of the Planning and Development Regulations 2001, as amended.

3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** States that the telecoms structure is works and is development within the meaning of the Act. Notes that there is no evidence of planning permission for the structure the applicant claims was on the roof of the demolished building since 2003. Notes that structure is 17m in height, that no information has been given regarding the temporary nature of the structure but that it has been in place since August 2024. States that the applicant has not provided any information regarding why the structure is needed for the development currently under construction at the site and therefore the exemption under Class 16 does not apply. Development does not fall under any of the exemptions under Class31(a-k), does not comply with Class 16(g) as the mast is over 15m and has been in place for over 16 no. weeks. Also notes that the statutory undertaker did not notify the Planning Authority of the installation before it was operational. Concludes that development is not exempted development.

4.0 Planning History

- 4.1.1. **ABP-316593-23:** Permission granted for the demolition of structures and the construction of 2 no. blocks with 48 no. apartments. Condition no. 7 of the decision requires all service cables including telecoms to be underground.

5.0 Policy Context

5.1. Dublin City Council Development Plan 2022-2028

- 5.1.1. The subject site is on lands zoned Z1 Sustainable Residential Neighbourhoods, which has the stated objective 'to protect, provide and improve residential amenities'.
- 5.1.2. Section 15.18.5 of the development plan refers to Telecommunications and Digital Connectivity. It states that the provision and siting of telecommunications antennae shall take account of the Telecommunications Antennae and Support Structures –

Guidelines for Planning Authorities, (Department of Environment and Local Government, 1996), as revised by DECLG Circular Letter PL 07/12, and any successor guidance. Telecommunications antennae and supporting structures should preferably be located on industrial estates or on lands zoned for industrial/employment uses. Possible locations in commercial areas, such as rooftop locations on tall buildings, may also be acceptable, subject to visual amenity considerations. In terms of the design of free-standing masts, masts and antennae should be designed for the specific location.

- 5.1.3. In assessing proposals for telecommunication antennae and support structures, factors such as the object in the wider townscape and the position of the object with respect to the skyline will be closely examined. These factors will be carefully considered when assessing proposals in a designated conservation area, open space amenity area, historic park, or in the vicinity of protected buildings, special views or prospects, monuments or sites of archaeological importance. The location of antennae or support structures within any of these areas or in proximity to protected structures, archaeological sites and other monuments should be avoided. Where existing support structures are not unduly obtrusive, the City Council will encourage co-location or sharing of digital connectivity infrastructure such as antennae on existing support structures, masts and tall buildings (see Policy SI48). Applicants must satisfy the City Council that they have made every reasonable effort to share with other operators.

5.2. Natural Heritage Designations

- 5.2.1. None on or adjoining the subject site.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. The submission of the referrer is that Dublin City Council has erred in refusing to accept the exemption under Class 16 for the following reasons:
- The application to the City Council demonstrated that without the temporary structure the area would be devoid of the cellular signal from all three telecoms networks. Cellular signal is essential for emergency services and for residents in the area.

- The application demonstrated the history of the property which has maintained cellular telecommunications infrastructure for the past 20 years.
- The presence of temporary telecoms is not inconsistent with other temporary measures required for development such as hoarding, tower cranes, site offices.
- The application addressed the retention of temporary telecoms channels as required by the Development Plan and the Urban Building Height Guidelines. The temporary structure should have formed part of the conditions for approval.
- The referrer did not apply for exemption under Class 31(g) and its inclusion in the Planning Authority decision is immaterial.
- The referrer submits that the development is exempt under Class 16 of Schedule 2, Part 1 of the Planning and Development Regulations, that it is genuinely needed in connection with the development on the site and that it serves a specific purpose tied to the operations of the site.

6.1.2. The submission is accompanied by:

- a letter of consent from the landowner,
- letter of support from Vodafone Ireland, which includes a radio engineering site justification
- letter of support from Three, which includes an RF Technical Justification Report
- letter of support from Eir
- submission from the section 5 applicant which provides detail on the justification for the retention of the structure, details of other masts considered and discounted for co-location, outdoor coverage map.
- A copy of the section 5 application form and cover letter submitted to Dublin City Council

6.2. Planning Authority Response

6.2.1. None on file.

6.3. Owner/ occupier's response

6.3.1. None on file.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

"**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

"**structure**" means any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined and

(a) Where this context so admits, includes the land on, in or under which the structure is situated".

7.1.3. **Section 3(1):** in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

7.1.4. **Section 4(1):** sets out developments that shall be exempted development for the purposes of this Act.

7.1.5. **Section 5(1):** If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

7.1.6. **Section 5(3)(a)** Where a declaration is issued under this section, any person issued with a declaration under subsection (2) (a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration. (b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).

- 7.1.7. **Section 5(4):** Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

7.2. **Planning and Development Regulations, 2001**

- 7.2.1. Part 2 of the Planning and Development Regulations, 2001 refers to Exempted Development. Of relevance to the subject proposal:

CLASS 16

The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

8.0 **Assessment**

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the above proposal in terms of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

8.2. **Is or is not development**

- 8.2.1. Neither of the parties are in dispute that the erection of the telecommunications structure on the site is development in accordance with section 3(1) of the Act, given that it involves the carrying out of any works on land.

8.3. **Is or is not exempted development**

- 8.3.1. The referrer submits that the subject development is exempted development under the provisions of Class 16 of the regulations. The Planning Authority in their declaration rejected this submission, stating that the applicant had not provided any information regarding why the structure is needed for the development currently under construction at the site.

- 8.3.2. In their submission to the Planning Authority and to the Board, the referrer states that without the structure the area within 300m of the site 'will be devoid of the ability to use a handheld cellular device to contact fire and ambulance services, ... utilise other voice or data services..'. The submission states that no other suitable sites are available. The submission refers to the planning permission on the site and states that no consideration of the implications of the permission on the telecoms structure was undertaken. The submission states that the temporary telecoms structure allows the applicant / developer of the site to be in compliance with Health & Welfare at work construction Regulations and related policies and objectives of the development plan. The submission states that the structure is vital to maintain coverage and services to this area of Dublin during the period of construction. The submission notes that permission will be sought for a permanent installation on the roof of the completed development, with the temporary structure moved to the roof of the completed building.
- 8.3.3. Class 16 of the regulations provide exemption for development of structures needed temporarily in connection with development that has received planning permission under the Act, during the period in which it is being carried out. Class 16 exemption requires that the structures be removed at the expiration of the period and that the land be reinstated unless permission is granted otherwise.
- 8.3.4. The referrer has made a case about why a structure may be required on the subject site for overall coverage, but no evidence has been submitted that a temporary structure on site is directly linked to the construction ongoing on the subject site. The referrer submits that the structure is required to be in compliance with health & welfare at work Act but not only are no specific details provided, but this is not linked to the permission on the site. The exemption provided under Class 16 is clear: a temporary structure must be needed in connection with a planning permission during the period in which it is being carried out. No such case has been made in the subject referral.
- 8.3.5. Regarding the submission of the referrer that the permission on site necessitates the temporary structure, I note that there is no reference in that application (ABP-316593-23) to an existing telecommunications structure. Condition no. 7 of that Board decision requires all services including telecommunications to be underground.

- 8.3.6. I draw a distinction, as I believe the Regulations do, between temporary structures needed in connection with the carrying out of the authorised development, and temporary structures that are required as a consequence of the development. No evidence has been submitted that the subject development is needed in connection with the permitted development. The referrers submission regarding a lack of coverage in the area does not bring the development within the parameters of Class 16. Likewise, the policies and objectives of the development plan, while relevant to the planning history on the site, do not bring the development under Class 16. I am satisfied that the exemption provided under Class 16 of Schedule 2, Part 1 of the Planning and Development Regulations is not applicable to the subject development.
- 8.3.7. The proposed development does not fall under any of the provisions of Class 31 of the Regulations. There are no other exemptions provided for under the Act or under the Regulations that apply to the subject development

9.0 Recommendation

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

WHEREAS a question has arisen as to whether the existing temporary telecommunications structure comprised of a 15m transportable monopole structure secured by 4 anchor bolts to 4 No. 2m x 2m x 1m removable concrete ballast blocks; & all associated antennas, dishes and ancillary ground-based equipment cabinets, situated within the construction site hoarding on a section of land at 80-82 Philipsburgh Avenue, is or is not development and is or is not exempted development:

AND WHEREAS Independent Site Management requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 10th day of February, 2025 stating that the matter was development and was not exempted development:

AND WHEREAS Independent Site Management referred this declaration for review to An Bord Pleanála on the 19th day of February, 2025:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the erection of a temporary telecommunications structure comprised of a 15m transportable monopole structure secured by 4 anchor bolts to 4 No. 2m x 2m x 1m removable concrete ballast blocks; & all associated antennas, dishes and ancillary ground-based equipment cabinets does not come within the scope of Class 16 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, in that the structure is not needed temporarily in connection with the development permitted under planning register reference number ABP-316593-23,

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the existing temporary telecommunications structure comprised of a 15m transportable monopole structure secured by 4 anchor bolts to 4 no. 2m x 2m x 1m removable concrete ballast blocks; & all associated antennas, dishes and ancillary ground-based equipment cabinets is development and is not exempted development.

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.



Gillian Kane
Senior Planning Inspector

23 April 2025