



An
Bord
Pleanála

Inspector's Report RL93.RL3453.

Question	Whether the erection of an 80 metre mast is or is not development or is or is not exempted development.
Location	Ballintaylor, County Waterford.
Declaration	
Planning Authority	Waterford County Council
Planning Authority Reg. Ref.	D5/20525
Applicant for Declaration	Ecopower Developments Limited.
Planning Authority Decision	The structure is development and is exempted development.
Referral	
Referred by	Blackwater Valley Alliance.
Owner/ Occupier	Ecopower Developments Limited.
Observer(s)	None.
Date of Site Inspection	14 th September 2018
Inspector	Philip Davis.

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1.0 Site Location and Description

The site in question is in the upland ridge that extends from the Waterford coast at Ring (An Rinn), westwards towards north Cork along the southern side of the Blackwater Valley. It overlooks the wide plain and bay around the town of Dungarvan. The uplands area is characterised by undulating open heath, low quality grazing land and extensive conifer plantations, generally around 200-250 metres AOD.

The site in question is within recently cleared and replanted conifer woodlands in a spur facing north-east on the north-eastern side of the ridge. The spur has a slight peak known as Knockaunabouchala. The land is on the 240 metre contour, just short of the scarp slope – the ridge edge drops around 100 metres in elevation over 1 km. The site is occupied by a large telecommunications mast (this is not the structure in question – the site for the mast is to the north-west). There is a small control building next to the telecommunications mast, it is otherwise surrounded by conifer plantation, with the closest dwelling over 200 metres to the north, on lower ground.

2.0 The Question

- 2.1. Whether the erection of an 80 metre mast is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

On the 14th December 2015 the planning authority declared that the erection of a structure (80m mast) is development and is exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Under Class 20A, Part 1 of Schedule 2 the provision of ‘a mast for mapping meteorological conditions’ is exempted development subject to a number of

conditions. It is considered that the development in question falls within the conditions and as such it is considered exempted development under Class 20A.

- It is considered that there are no relevant de-exemptions under Article 9. It is noted that while the site is in an area designated as 'visually vulnerable' in the Development Plan, it does not have a specific objective for preservation.
- It is considered that as the site is 4.9 km from the closest Natura 2000 site it is not considered to adversely impact on those designations (Screening report attached).

3.2.2. Other Technical Reports

An AA screening report attached notes that the closest designated habitats are in the Comeragh Mountains, around Tramore and the Nire Valley. It is considered that significant issues can be ruled out.

4.0 Planning History

None on file.

5.0 Policy Context

5.1. Development Plan

The site is in open countryside without a specific zoning designation.

5.2. Natural Heritage Designations

The closest EU designated habitats are the Dungarvan Harbour SPA site code 004032, the River Nore SAC (it is not within the catchment of the latter), and the Comeragh Mountains SAC.

6.0 The Referral

6.1. Referrer's Case

- It is stated that there is no dispute that the mast is development under Section 2 of the Act.
- Notes test set out in Dillon -v-Irish Cement Limited (1986) that any development must fall squarely within the exemption relied upon and that any ambiguity must be constructed as disallowing the exemption.
- It is argued that the Planning Authority considered whether the structure was exempted under Class 20A but gave no indication as to how the conclusion was arrived at.
- With regard to Article 9, it is argued that the de-exemption under Article 9(1)(a)(vi) should apply having regard to the visual impact on the landscape in an area designated for protection in the Waterford County Development Plan.
- It is argued with regard to Article 9 that the planning authority did not have regard to the 'special interest' of the landscape and only focused on the absence of a view or prospect.
- It is noted that the planning authority and the Board have refused permission for developments in the area specifically for visual amenity reasons (e.g. PL93.244006).
- It is also noted that the Development Plan scenic landscape evaluation notes the importance of skyline ridges, etc (Appendix 9).
- It is argued that the location of the site on such a sensitive ridge should have been sufficient for de-exemption under Article 9.
- It is argued that the site is visible from a number of designated scenic routes, including the N52 and R671.
- It is argued that there was insufficient screening for AA. Refers to Sweetman -v- ABP C127-02 with regard to the issue of doubt relating to adverse effects. Also referred to the issue of 'doubt' with regard to the Supreme Court judgement Philip Dillon -v-Irish Cement Limited (1986).

- It is argued that the proposed mast cannot be seen in isolation from the proposed windfarm development promoted by the applicant with regard to Appropriate Assessment (Section 4(4) of the Act).

6.2. **Planning Authority Response**

The planning authority refers the Board to the planners report on file.

6.3. **Owner / occupier's response**

- Concurs with the decision of the planning authority.
- It is noted that the mast is temporary and only up for 15 months.
- It is argued that it follows a pattern of development on high ground in the area.
- It is denied that it is on a visually vulnerable ridgeline or in an area designated as sensitive in the Development Plan.
- It is in an area identified as strategic for wind farm developments in the development plan.
- The nearest watercourse is 570 metres distant and the nearest EU site is 4.9 km away.
- Details are provided for the design and construction and decommissioning of the mast.

6.4. **Further Responses**

In response to the submission from Ecopower Developments, the referrer raised the following points:

- It is acknowledged that the site is within clear felled forestry, but notes that this means that the site is more clearly visible, open, and exposed.
- It is argued that the area's designation for windfarms is not relevant to the question as to whether it is exempted development.
- It is argued that there are a number of channels and watercourses in the area leading to the designated EU habitat.

- It is noted that substantive ground works are required for the work.
- It is claimed that the site is misidentified in the submission – it is within Barranastook townland, and not (as previously identified by the Planning Authority), in Ballintaylor.
- It is reiterated that the site is visible from a number of designated scenic routes.
- The previous arguments are restated, in particular with regard to the nature of the landscape and site.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

3.— (1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

(2) For the purposes of *subsection (1)* and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders’ waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

(3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single

dwelling involves a material change in the use of the structure and of each part thereof which is so used.

4. (1) The following shall be exempted developments for the purposes of this Act—
 (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

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

Class 20A

Description of Development	Conditions and limitations.
<p>The erection of a mast for mapping meteorological conditions.</p>	<p>No such mast shall be erected for a period exceeding 15 months in any 24 month period.</p> <p>2. The total mast height shall not exceed 80 metres.</p> <p>3. The mast shall be a distance of not less than:</p> <p>(a) the total structure height plus:</p> <p>(i) 5 metres from any party boundary,</p> <p>(ii) 20 metres from any non-electrical overhead cables,</p> <p>(iii) 20 metres from any 38kV electricity distribution lines,</p> <p>(iv) 30 metres from the centreline of any electricity transmission line of 110kV or more.</p> <p>(b) 5 kilometres from the nearest airport or aerodrome, or any communication, navigation and surveillance facilities</p>

	<p>designated by the Irish Aviation Authority, save with the consent in writing of the Authority and compliance with any condition relating to the provision of aviation obstacle warning lighting.</p> <p>4. Not more than one such mast shall be erected within the site.</p> <p>5. All mast components shall have a matt, non-reflective finish and the blade shall be made of material that does not deflect telecommunications signals.</p> <p>6. No sign, advertisement or object, not required for the functioning or safety of the mast shall be attached to or exhibited on the mast.</p>
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Article 9(1)(vi)

Development to which Article 6 relates shall not be exempted development for the purposes of the Act-

(a) If the carrying out of such development would -

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

8.0 Assessment

8.1. Is or is not development

- 8.1.1. It is not in dispute that the meteorological mast, erected for wind monitoring purposes, is development. The Referrer argues that it is not excepted development by way of Article 9(a)(vi) and the requirements for Appropriate Assessment.

8.2. Is or is not exempted development

- 8.2.1. The mast is exempted development under Class 20A, Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as amended. Under Class 20A, there are 6 no. conditions and limitations. The planning authority are satisfied that they all apply and I would concur with this conclusion – I do not consider that there is any doubt or ambiguity in this interpretation. I note condition and limitation (1) states that it shall not be erected for more than 15 months out of any 24 months – I note that the mast was no longer in place during my site visit, but it is open to the developer to re-erect it if necessary.

8.3. Restrictions on exempted development

- 8.3.1. The referrer has argued that the development is de-exempted under Article 9 of the Regulations, specifically A9(a)(vi):

interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

- 8.3.2. In the ‘Scenic Landscape Evaluation’ Plan in the County Development Plan the site is along a ridge indicated as ‘visually vulnerable’ and in a ‘sensitive’ landscape, but as the planning authority state in their assessment, these are descriptive terms, not statutory designations. The N25 between Dungarvan and Youghal is a scenic route as is a minor road which runs from a junction on the N25 to Clashmore. This latter road runs through the uplands, at its closest about 2.5 km to the south. At its

closest, it is 4.5 km from the N25. Due to the topography and large areas of conifer plantation in the general area, the site is not clearly visible from any part of these designated scenic routes and even at its highest, the mast would not be a feature and could not be said to interfere with a view from the designated scenic route.

- 8.3.3. While I would concur with the overall argument of the referrer that the site is on a prominent and visible site, and the landscape is indeed quite sensitive due to the prominence of the ridge, the descriptions in the development plan are clearly for descriptive purposes not specific landscape designations, so A.9(a)(vi) cannot apply.
- 8.3.4. The planning authority carried out an AA screening assessment which concluded that significant impacts can be ruled out. The site is within the catchment of the Dungarvan Harbour SPA, designated for its importance as a wildfowl roosting/breeding area. The closest point of this designated area is the estuary of the Brickey River, just under 5km from the site. The Brickey River flows along the base of the escarpment, about 1km at its closest to the site.
- 8.3.5. The site has no watercourses on it, although there is a network of land drains in the area – dry at the time of my site visit. There is a small watercourse running about 200 metres south of the site, down the escarpment, draining into the Brickey.
- 8.3.6. Having regard to the nature of the proposed development, which involves a relatively ‘light footprint’ in an afforested area, I am satisfied that there are no pathways for pollution or other impacts to any designated EU habitat. I would therefore concur with the conclusion of the planning authority that there would be no significant effects, and hence this would not de-exempt the development as no NIS is required.

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 erection of an 80 metre meteorological mast is or is not development or is or is not exempted development:

AND WHEREAS requested a declaration on this question from

Council and the Council issued a declaration on the 14th day of December, 2015 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 18th day of January, 2016:

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) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site and the provisions of the County Development Plan,
- (g) the pattern of development in the area,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The site is not in an area designated for protection in the County Development Plan and is not within sight of a designated scenic route or view and prospect,
- (b) There would be no significant effects on any designated European site.

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 erection of an 80 metre high meteorological mast is development and is exempted development.

Philip Davis
Planning Inspector

12th October 2018