



Comhairle Contae  
Ros Comáin  
Roscommon  
County Council



**AN BORD PLEANÁLA**  
 LDG- 016902-19  
 ABP- \_\_\_\_\_  
 25 JUN 2019  
 Fee: € 110 Type: PMW  
 Time: 11-06 By: Reg Post

**REGISTERED POST**

The Secretary,  
An Bord Pleanála,  
Marlborough Street,  
Dublin 1. D01 V902.

Date: 21<sup>st</sup> June, 2019  
Ref: DED 363

RE: **Application for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended) - Whether the change of use from an Emergency Services Mast to a Commercial Mast is or is not development and is or is not exempted development.**

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A Chara,

Roscommon County Council wishes to refer the above Application for a Declaration under Section 5 of the Planning and Development Act, 2000 (as amended), Ref No. DED 363, to An Bord Pleanála for its consideration.

Please find herewith copy of the application as received by Roscommon County Council, together with Paying Order in the sum of €110.00 being the fee payable in respect of this referral.

Mise le meas,

Mary Dolan,  
Administrative Officer,  
Planning.

JC



REMITTANCE ADVICE / FAISNÉIS ÍOCAÍOCHTA

AN BORD PLEANALA 64 MARLBORO STREET DUBLIN 1 Ireland
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<b>Cheque No.</b>	469702
<b>Supp ID / Uimh. Aitheantais</b>	18039
<b>Date / Dáta</b>	21/06/2019
<b>Page / Leathanach</b>	1/1

Your Ref/ Bhur dTagairt	Inv Date/ Dáta Sonraisc	Our Ref/ Ár dTagairt	AMOUNT/ SUIM EUR	Payable Iníoctha EUR
DED 363 RCC	18/06/2019	30425194	110.00	110.00
<div style="border: 2px solid red; padding: 10px; width: fit-content; margin: auto;"> <p><b>AN BORD PLEANÁLA</b></p> <p><b>25 JUN 2019</b></p> <p>LTR DATED _____ FROM _____</p> <p>LDG- _____</p> <p>ABP- _____</p> </div>				
<b>PAGE TOTAL / IOMLÁN AN LEATHANAIGH</b>			<b>EUR 110.00</b>	<b>110.00</b>
<b>GRAND TOTAL / MÓRIOMLÁN</b>			<b>EUR 110.00</b>	<b>110.00</b>

**Planner's Report on application under Section 5 of the  
Planning and Development Act, 2000, as amended**

**Reference Number:** DED 363

**Name and Address of Applicant:** Michael Hussey,  
"Villa Maria"  
Ballydooley,  
Donamon,  
Co. Roscommon.

**WHEREAS a question has arisen as to whether the change of use from an Emergency Services Mast to a Commercial Mast at Gorticmeelra Townland, Co. Roscommon is or is not development and is or is not exempted development:**

**1.0 Site Location and Description**

The site is located at the site of the existing Eircom Exchange structure to the south of Oran Cross, approximately 8km west of Roscommon town. There is an existing mast on site which was previously permitted for use by the Emergency Services.

**2.0 Planning History**

**19/81:** Retention Permission for development consisting of retention of an existing telecommunications installation comprised of a 15m support structure, antennas; associated equipment and fencing used by the Emergency Services (Garda, Fire Brigade and Ambulance), Planning permission is also sought for future additional telecommunications, antennas, dishes, associated equipment cabinets and fencing. (currently on appeal with An Bord Pleanála, reference ABP-304418-19.

**08/178 (An Bord Pleanála reference 20.230660):** Permission granted by ABP to construct a 25 metre support pole to carry 3 no. radio aerials for use by the Emergency Services (Garda, Ambulance and Fire Brigade) together with associated equipment and fencing for a new National Digital Radio Service at the eircom exchange.

**3.0 Relevant Legislation**

**Planning and Development Act, 2000 (as amended)**

**Section 2 (1)**

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

**Section 3 (1)**

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.

Section 4 (2) of the Planning and Development Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations.

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**Planning and Development Regulations, 2001 (as amended)**

Article 5 (1) *Interpretation for this Part*

“telecommunications network” means the whole of the telecommunications infrastructure and any associated physical infrastructure of any network operator;

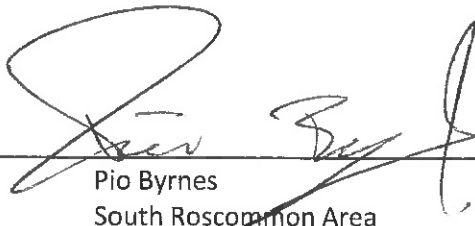
“telecommunications service” means services which consist wholly or partly in the transmission or routing of signals on a telecommunications network or both transmission and routing;

**4.0 Recommendation**

The planning history in this site is relevant when it comes to the determination of this declaration. Planning reference number 08/178 was granted permission subject to an appeal to an Bord Pleanála, ref no. 20.230660, following a decision to refuse permission by Roscommon County Council. There is a current application on the site, planning reference number, 19/81, which is currently on appeal with an Bord Pleanála. It is also important to point out that the planning permission process and the Section 5 declaration process are two very different assessments.

The question put forward to the Planning Authority is whether or not the change of use from an Emergency Services Mast to a Commercial Mast is or is not development and is or is not exempted development. Having studied the relevant planning legislation, there is no distinct definition as to what constitutes a mast or indeed what constitutes a commercial mast as distinct to an emergency mast. The terms telecommunications network and service is interpreted in the Planning and Development Regulations and is outlined above. In the absence of clear interpretation, it is considered appropriate to refer the question to an Bord Pleanála under Section 5 (4) of the Planning and Development Act 2000 (as amended).

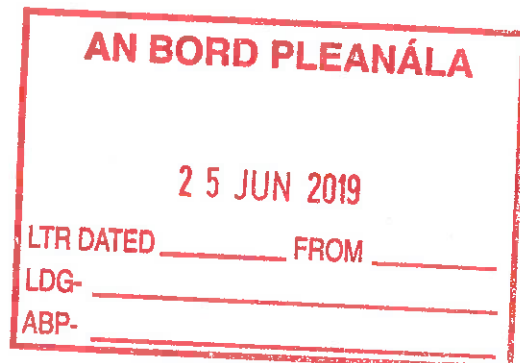
Signed: \_\_\_\_\_



Pío Byrnes  
South Roscommon Area

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

20-6-19



"VILLA MARIA"

Ballybeg

Derry

CO Roscommon

(0406662233)

RE: DED 363

PRO: Planning Act Resurrection CO-CO.

DEAR SIR/MADAM, I wish to submit this document  
as part of file DED 363

Thanking you

Yours Sincerely

Michael Hussey



<b>AN BORD PLEANÁLA</b>	
25 JUN 2019	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	

Michael Hussey,  
"Villa Maria",  
Ballydooley,  
Donamon,  
Co. Roscommon.

Date: 12<sup>th</sup> June, 2019  
Planning Reference: DED 363

Re: Application for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended), regarding Exempted Development - Whether the change of use from an Emergency Services Mast to a Commercial Mast is development, or is development which is exempted development or which is not exempted development at Gorticmeelra, Donamon, Roscommon.

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A Chara,

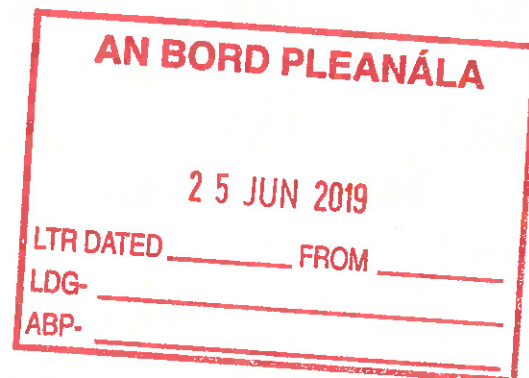
I wish to acknowledge receipt of your application received on the 11/06/2019 for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended), regarding Exempted Development along with the appropriate fee in the sum of €80.00 Receipt No. L01/0/200735 dated 11/06/2019.

Note: Please note your Planning Reference No. is **DED363**.  
This should be quoted in all correspondence and telephone queries.

Mise le meas,



Mary Dolan,  
Administrative Officer,  
Planning.  
HS



Roscommon County Council  
Aras an Chontae  
Roscommon  
09066 37100

11/06/2019 11:06:42

Receipt No. : L01/0/200735

MICHAEL HUSSEY  
VILLA MARIA  
BALLYDOOLEY  
DONAMON  
CO. ROSCOMMON

PLANNING APPLICATION FEES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	
DED 363	

Total : 80.00 EUR

Tendered :  
Credit/Debit Card 80.00  
9806

Change : 0.00

Issued By : Amanda Scanlon  
From : Central Cash Office



DEA 363.



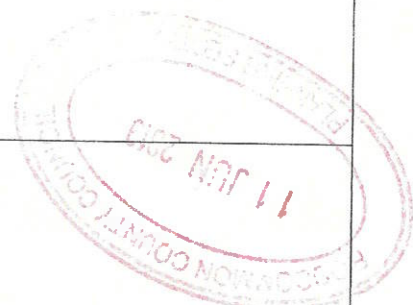
Comhairle Contae  
Ros Comáin  
Roscommon  
County Council

Áras an Chontae,  
Roscommon,  
Co. Roscommon  
Phone: (090) 66 37100  
Email: [planning@roscommoncoco.ie](mailto:planning@roscommoncoco.ie)

**Roscommon County Council**

Application for a Declaration under Section 5 of the Planning & Development Act 2000,  
regarding Exempted Development

Name:	Michael Hussey
Address:	"VILLA MARIA" Ballydoon Dunmow CO ROSCOMMON
Name & Address of Agent:	N/A
Nature of Proposed Works	AS PER SITE LAYOUT PLAN ENCLOSED ALL STRUCTURES ENCLOSED ON SITE.
Location (Townland & O.S No.)	GORTICMURRA Dunmow Roscommon
Floor Area	AS PER SITE LAYOUT PLAN ENCLOSED
Height above ground level	AS PER SITE LAYOUT PLAN ENCLOSED
Total area of private open space remaining after completion of this development	AS PER SITE LAYOUT PLAN ENCLOSED
Roofing Material (Slates, Tiles, other) (Specify)	N/A
Proposed external walling (plaster, stonework, brick or other finish, giving colour)	N/A
Is proposed works located at front/rear/side of existing house.	N/A



**AN BORD PLEANÁLA**

25 JUN 2019

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_



Villa Maria,  
Ballydooley,  
Donamon,  
Co. Roscommon.

6<sup>th</sup> June 2019.

To whom it may concern,

**SUBJECT: SECTION 5 DECLARATION REQUEST**

I wish to request a Section 5 Declaration request on the question raised hereunder pursuant to the relevant provisions of the *Planning and Development Act 2000* as amended.

Please find attached Application template as provided to me by Roscommon County Council. Also please find relevant maps attached and fee of €80.

I wish to submit that I attended the Planning Counter on two occasions previous to this and after lengthy waits on each occasion, I came away without having lodged a Section 5 Declaration request. I hope that the planning authority accepts this Declaration Request and I trust that a decision on the Question raised herewith will be made within 4 weeks of this request as per the Statutory requirement under Section 5 (3) as follows:

*'a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request under subsection (1), and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.*

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Section 5 of Part 1 of the Planning and Development Act 2000 as amended has the title:

**'Declaration and referral on development and exempted development'**.

I wish to submit that the attached application form handed to me by the planning authority on my second visit to the planning counter is in fact misleading and is not factually correct as 'the Act' clearly states that a declaration is with respect of what is **Development and Exempted Development**.

It appears that this application template will merely refer to what is 'Exempted Development' as this term is in bold and is underlined on this template. This would be a gross error and a misinterpretation of the Act. It would be highly remiss of a planning authority to respond to a Section 5 Declaration request by merely assessing what is 'Exempt Development'.

This is not in accordance with the Section 5 of the Planning and Development Act 2000 (as amended).

I hereby submit a request for a Declaration by the Planning Authority in accordance with Section 5 of the Act and I note that the relevant title under Section 5 of the Act refers "Declaration and referral on **development and exempted development**'

This Declaration request or Question is more concerned with the aspect of 'development' as what is exempt development is clear under the Planning and Development Regulations, including the recent amendments under Class 31, albeit that it is submitted that the Regulations are not sufficiently detailed.

It is contended that the nature of the Emergency Services Use, which has entirely its own characteristics, is under Planning Law, considered to be a 'Sui Generis' use - a class of its own (the emergency services mast). Therefore the general exemptions set out under Class 31 do not apply to this class of development, as it is set apart with its own characteristics. Accordingly, the intensification of use on site to that of a fully operational commercial services mast cannot be considered as an exempted use under Class 31.

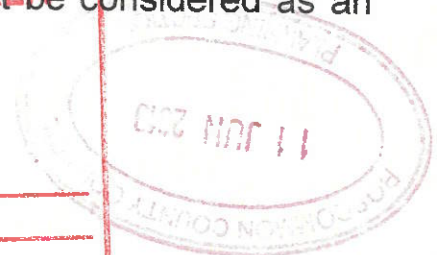
AN BORD PLEANÁLA

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Furthermore it is submitted that the proposal to change the use from an emergency services use to a commercial use, amounts to a material change of use, which is in fact 'development' as per the definition of development under Section 3 of the Act, whereby the following definition refers:

*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.*

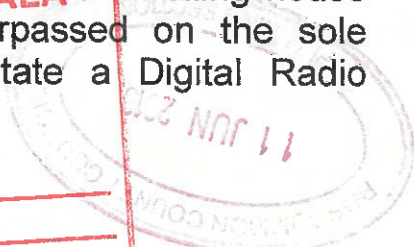
Accordingly, it is submitted that relevant exemptions under Class 31 are not applicable as this would infer that Emergency Services Use is the same Use Class as a fully operational Commercial Use. This is simply not the fact. Therefore it is not possible to draw on the general exemptions for masts under the Planning and Development Regulations 2001 -2018. It is submitted that as the Emergency Services Use, being a *Sui Generis* Use, is therefore a different 'Class of Use', therefore it is not possible to claim exemptions under Section 31.

Therefore it is submitted to the Planning Authority that the proposal to intensify use from Emergency Services Use, to fully operational Commercial Mast is a material change of a use. It is also development as per the above definition and finally it is development, which is not exempted development by virtue of the status of Emergency Services Mast Use, being a *Sui Generis* Use (A class of its own).

The planning authority is therefore encouraged to find that the Change of Use from an Emergency Services Mast to a Commercial Mast is a material change of use and an intensification of use and is therefore 'development', which is not exempted development.

It is submitted that the Planning Inspector under his report and as clearly accepted by The Board Decision and Board Order under PL 20.230660, clearly articulated the obvious distinction and material change between the use of an emergency services mast and that of a commercial proposition. Commercial Masts -3G, 4G and 5G masts carry a volume of radio traffic, which dwarfs the use of an Emergency Services Mast. This fact unto itself underpins the material change concerned. Under this same application/appeal the 100 metre minimum distance (as per previous and current development plan) from mast to a dwelling house rule was in this 'exceptional circumstance' surpassed on the sole rationale that the proposed use was to facilitate a Digital Radio

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LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
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Emergency Services use. To creep a fully operational commercial use in on this site under newly introduced and vague Planning Regulations, which fail to draw a clear distinction between Emergency Services Masts and Commercial Masts, would be immoral, unjust, unfair and inequitable and furthermore would represent a means to circumvent or flout the Planning Laws in operation on this land.

The planning system must be fair and consistent in its treatment of all citizens of this land. Finally, the material change of use requires further planning considerations to be considered, for example and *inter alia*, a parking lay-bye for the frontage of the site is currently required and a full sight distance triangle is also required for this site. Such provisions were not required in the 1950's when this site was first initiated as a Telecom Eireann exchange. A commercial use is a material change of use and an intensification of use, which will require vehicular traffic to be able to park and manoeuvre with equipment. Industry knowledge also indicates that a commercial use would require far more maintenance and routine ongoing access than that of a Digital Radio Emergency Services mast. This intensification should be subject of an assessment of all of the relevant planning considerations.

It should also be noted that a serious accident occurred on this exact stretch of road in 2015. An Garda Siochana was called and this accident is recorded on the National Road Accidents Register. The precarious nature of this stretch of road should not be under rated in this instance as an intensification of use should consider access and traffic safety. It is submitted that failure to do so would be seriously negligent.

The following is the Question, which is being put to the Planning Authority.

**Question:**

'Whether the Change of Use from an Emergency Services Mast to a Commercial Mast is development, or is development, which is exempted development or which is not exempted development'

I look forward to hearing from you with an answer to my question during the next four weeks.

Yours Sincerely,

Michael Hussey

Michael Hussey

