

MIONTUAIRISCÍ NA CRUINNITHE SPEISIALTA DE COMHAIRLE CONTAE CHIARRAÍ A THIONÓLADH I SEOMRA NA COMHAIRLE, ÁRAS AN CHONTAE, TRÁ LÍ, AR AN AOINE , 11 FEABHRA 2011

MINUTES OF SPECIAL MEETING OF KERRY COUNTY COUNCIL HELD IN THE COUNCIL CHAMBERS ÁRAS AN CHONTAE, TRALEE ON FRIDAY 11TH FEBRUARY 2011 TO ADDRESS THE CONCERNS OF THE KILCUMMIN RESIDENTS GROUP AND TO CONTEST THE DECISION OF THE PLANNING DEPARTMENT OF KERRY COUNTY COUNCIL TO CHANGE ITS POSITION ON THE ACCESS ROUTE TO THE H3G MAST SITE AT BUDDAGHAUNS, KILCUMMIN KILLARNEY.

PRESENT/I LÁTHAIR

Councillors/Comhairleoirí

J. Brassil	T. Buckley	B. Cronin
P.J. Donovan	T. Ferris	J. Finucane
T Fleming	N Foley	M. Gleeson
B. Griffin	D. Healy-Rae	M. Healy-Rae
P. Leahy	P. McCarthy	M Moloney
T. O'Brien	P. O'Donoghue	M. O'Shea
J. Sheahan	A.J. Spring	

IN ATTENDANCE/I LÁTHAIR

Mr. T. Curran, County Manager	Mr. J. O'Connor, Head of Finance
Mr. J.D. Flynn, Dir. of Corp. Servs.	Mr Michael McMahon Dir Planning
Mr. G. O'Brien, Meetings Administrator	Mr. P. Corkery, Press & Comm.
Ms. J. McCarthy SEO Planning	Mr. Paul O'Connor EE Planning
Ms. S Broderick SO Corporate Affairs	

The meeting commenced at 10.20 am following an adjournment for 20 minutes which was granted by Mayor Pat Leahy at the request of Cllr. Maria Moloney.

The Mayor Cllr. P. Leahy took the Chair.

Cllr. Leahy advised the members that due to another commitment, he would be leaving at 11.00 am and asked that they would be mindful of this when making their contributions.

Cllr. Michael Healy Rae supported Cllr. Leahy's request that contributions would be brief.

Cllr. Marie Moloney said that there were a number of questions which she wished to put to the meeting on behalf of the residents of Buddaghauns Kilcummin.

Cllr. Terry O'Brien proposed that Mr. Michael McMahon Director of Planning & Sustainable Development would address the meeting at the outset and this would be followed by any comments and submissions which the members wished to make.

All the members agreed with Cllr. O'Brien's proposal.

11.02.11.1 To address the concerns of the Kilcummin Residents Group and to contest the decision of the Planning Department of Kerry County Council to change its position on the access route to the H3G mast site at Buddaghauns, Kilcummin Killarney.

Mr. Michael McMahon Director of Planning & Sustainable Development informed the meeting that planning application 09/1343 was received from Hutchinson 3G Ireland on the 28th October 2009 for "15m high monopole telecommunications support structure with 3 antennas and 3 radio link dishes etc".

Planning permission was refused on the 17th December 2009 (one condition) 1km Rule. Mr. McMahon pointed out that Kerry County Council would have granted planning permission in the case of 09/1343 if compliance with the 1km rule had not been required.

The decision of Kerry County Council was appealed to An Bord Pleanála on the 22nd January 2010

Permission was granted by An Bord Pleanála on the 13th July 2010 subject to 8 no. conditions

Enforcement:-

A Complaint was received in early August 2010 regarding work which had commenced without complying with planning conditions

The site was inspected on 5th August 2010 by the Planning Enforcement Officer who noted work had commenced on site but had ceased, pending compliance with planning conditions

Compliance documentation was received on 5th August 2010 and replied to on 31st August 2010

A further complaint was received on 8th December 2010 regarding access being used. The site was inspected on 20th December 2010 but no new access was noted. A further complaint was received on 7th January 2011 and the site inspected on 10th January 2011.

The Planning Enforcement Officer noted that a new entrance was open but was considered exempted development under Articles 9(1)(a)(ii) of the Planning & Development Regulations 2001. The Planning Enforcement Officer also noted that about 80m of access road was constructed. This was not exempted development.

A Warning Letter was issued to the developer on the 14th January 2011. (Submissions to be made by 11th February 2011) requiring that the "newly created access track be restored to its previous condition by re-grading the track with topsoil and reseeding".

The site was revisited on the 3rd February 2011 and the Planning Enforcement Officer noted that the landowner had spread topsoil over the track to comply with the Warning Notice and that the access was now being gained by traversing over farm land.

Mr. McMahon said that the Planning Authority was satisfied that there was no unauthorised development at the site and no further action was required.

Cllr. Maria Moloney thanked the Mayor Cllr. Pat Leahy, the members and management of Kerry County Council for agreeing to hold this Special Meeting of Kerry County Council at her request. She read the following submission into the minutes:

"At the outset let me say, I and the people of this community are not against Broadband, just the location of this particular mast. This is a small close knit community who are now united on one cause and that is the health and safety of their families and especially the health and safety of their children. The people of this community have lived in the shadow of a mast for many, many years already. Over the years there has been numerous people diagnosed with cancer in the area unfortunately many terminal. While I cannot say without some doubt that the existing mast was the cause, I believe no one here can say it wasn't without some doubt either.

Now the proposal to erect another mast in the area has struck fear in the heart of the people. From the outset, they have asked 3G to push the mast back into the wide open land at least a few hundred meters to move it away from the family homes.

Do any of you here really believe that these people wanted to be catapulted into the national lime light. Do you think they really want to spend their time in all kinds of weather standing on a roadway fighting for what they believe in..

The people of this area in Kilcummin feel betrayed, they feel left down by the authorities by An Bord Plenala who ruled against them despite their own inspectors negative report, by Kerry County Council who has allowed 3G access route by using an unauthorised access road .

What we are now asking for is transparency and accountability which is sadly lacking in today's society".

The Kilcummin Residents Group have asked me to put the following questions to you for direct reply:

- 1. Has 3G complied with all conditions of planning?*
- 2. Where in the Planning Act does it state that what 3G are doing is now legal?*
- 3. What specific area of the Planning Act did ye base yer decision on?*
- 4. Is the new road structure unauthorised?*
- 5. The enforcement officer issued a warning instruction that the road be reinstated to its original condition and be regraded with topsoil – why is this not done and why does further sections of the road continue to be constructed despite warnings?*
- 6. What is or is there a maximum width of a temporary road?*
- 7. When did 3G write to Kerry County Council advising that they were using an alternative access, ie this newly constructed road.?*
- 8. Is the newly constructed road for agriculture or commercial purposes?*
- 9. Can the message go forward from here this morning that anyone who applies for planning can use an alternative access to their site, be it for a dwelling house, agriculture structure or commercial structure without being in breach of Planning.*

Cllr. Brendan Cronin welcomed the holding of this meeting and also welcomed the representatives of the Kilcummin Concerned Residents Group who were present in the public gallery.

He said that the residents were seriously concerned about the issues in connection with the access road/track to the H3G mast site at Buddaghauns, Kilcummin and would not be here in such a large number today were it not for their fear for the future health and safety of their families.

Cllr. Cronin said that he had been a member of Kerry County Council for 11 years and in all of that time had understood that Further Information (FI) was requested in the case of all planning applications where a proposed access route was not to the satisfaction of the Planning Authority. This access road/track in his opinion was an unauthorised access route to a commercial development. He felt that an exception had been made and a precedent had been set. He said that enforcement proceedings should be initiated for the land to be reinstated and the developer should be required to apply for retention permission to retain the access. Cllr. Cronin said that he was concerned that Kerry County Council's Planning Department was overly friendly with H3G.

Cllr. Michael Healy Rae welcomed the Kilcummin Concerned Residents Group to the meeting and acknowledged their upset and inconvenience.

He said that he had PROPOSED and SECONDED the inclusion of a 1km rule in the County Development Plan i.e. *"it is the policy of the Planning Authority that telecommunication masts shall not be located within 1 kilometre of residential properties, schools, hospitals or any structures where there is human occupancy for residential or daily work purposes"*. In this case An Bord Pleanála had over ruled the Council's decision on the planning application and ignored the content of the County Development Plan..

With regard to the access route, he said that he found it difficult to agree with the Council's decision that no further action was required. He said that it appeared that there was one rule for an individual who applies for planning permission for an access route and another for commercial developers. He said that he felt that the decision in this case had been wrong, management of Kerry County Council should review the matter and enforcement proceedings should be initiated. He said that he would not be happy if a telecommunication mast was located near his own home.

Mayor, Cllr. Pat Leahy reminded the members that the purpose of this meeting was to discuss the position regarding the access road/track to the site and asked that the discussion would be concentrated on this matter.

Chuir Cllr. Micheál O Glíósáin fáilte roimh gach duine go dtí an cruinniú.

Cllr. Gleeson said that the people of Buddaghauns felt belittled by a process that has not served them well and were worried about the health and safety of themselves and their children. He said that the residents felt threatened by the location of the mast and there were many alternative locations which could have been considered. They were also concerned that An Bord Pleanála's inspector had indicated that the appeal should be rejected.

Cllr. Gleeson said that scientists in Ireland have indicated recently, that a new much lighter, less visually obtrusive type of network platform would soon be available. He said that maybe the company in this case should take into consideration that the type of development to be constructed may be obsolete in a few years time. He said that local residents had an obligation to themselves and to their children's health into the future.

Cllr. Toireasa Ferris said that there were two major issues regarding this case.

1. The development would have been granted planning permission by Kerry County Council if the 1km rule had not been included in the County Development Plan 2009-2014. She said that the decision of the councillors to include the 1km rule had been vindicated time and time again and the members of Kerry County Council had no apology to make as they had adopted a County Development Plan in accordance with the wishes of the people of the county.
2. She said that many applicants for planning permission on their own landholdings, if granted permission, were obliged to build their houses on a site on the landholding identified by a planner

Cllr. Ferris referred to Articles 9(1) (a)(ii) of the Planning & Development Regulations 2001 under which the access was considered to be exempted development and questioned whether or not the route over farmland was exempted development. She said that she was aware of a development (stables) where Enforcement Procedures were taken when unauthorised traversing over farmland was taking place.

She also referred to the issue of Enforcement Notices by the Planning Authority in the cases where satellite dishes were located at the front of houses.

Cllr. Ferris said that companies such as H3G had the resources available to them to argue any tiny loop holes in the law but that is not the privilege of the ordinary person who is the bread and butter of this Local Authority. She said that the same law should apply to all applicants for planning permission. She said that she was very disappointed with Mr. McMahon's assertion that the Planning Authority would have granted permission for the development, if the 1km rule had not been included in the County Development Plan, without suggesting an alternative site further away from residential properties, for the location of the mast. She reaffirmed her support of the 1km rule.

Cllr. Tom Fleming welcomed the residents group to the meeting and said that the fighting spirit of the local community was admirable. He said that he was concerned that the mast was being located less than 1KM from more than 40 homes and the inspector from An Bord Pleanála had acknowledged that the residents had reasonable grounds for objection. He said that common sense should prevail in this case and Kerry County Council should act positively and immediately and take the views of the community into consideration.

Cllr. John Sheahan thanked Kerry County Council for holding a special meeting to discuss this matter and welcomed the Kilcummin Concerned Residents Group to the

meeting. He said that only isolated locations should be considered for the erection of telecommunication masts. Also, the developer should be required to close the access road/track if unauthorised development had taken place.

Cllr. John Brassil said that he has been opposed to the 1km rule from the outset in the County Development Plan for reasons such as those outlined in the discussion today. He said that in neighbouring Local Authorities where consideration of a 1km rule is not included in the planning process, up to 50% of planning applications for telecommunication masts which are refused by the Planning Authority are upheld by An Bord Pleanála. He acknowledged that some of the members viewed the inclusion of a 1km rule as a buffer of protection for structures where there is human occupancy for residential or daily work purposes but stressed that until such a time as all aspects of the planning application is considered, groups such as the residents of Killcummin would be replicated all over the county.

Cllr. Brassil referred to the need for a good Broadband service in the county in order to generate jobs and drive growth and productivity. He said that there are antennas all around us, there are two located on the grounds of the County Buildings, there was one at the Garda Station in Ballyheigue where he lived. He did not know if they were a risk to health but he knew that he needed his mobile phone. He said that in this case An Bord Pleanála had made a decision, however if the access road/track was unauthorised development, then all work should be stopped and an application for retention permission should be required.

The Mayor Cllr. Pat Leahy excused himself from the meeting at this stage and Deputy Mayor Cllr. Marie Moloney took the Chair.

As Cllr. Moloney had requested this meeting she informed the members that she would now have to be totally impartial in her role as Deputy Mayor and Chairperson of the meeting.

Cllr. Brendan Griffin welcomed the Kilcummin Concerned Residents Group to the meeting and said that there were a number of questions which he would like to management of the Planning Department to answer with regard to this application.

Was the correct procedure followed?

What was the chronology of events?

Have the people of Kilcummin a right to be fearful of a two tier planning system in the county?.

Can large multinational companies do what they want, against the wishes of the Local Authority?.

Cllr. Danny Healy welcomed the Kilcummin Concerned Residents Group to the meeting and said that he had recently attended a meeting at Coolick school regarding this matter and he assured the residents of his support. He said that many local people had been refused planning permission for single houses in this area. Also, residents were fearful with regard to the construction of masts as they did not know

what their impact was on the long term health of the community. He called on H3G to consider relocating the development to an alternative site on the land.

Cllr. Jim Finucane, PJ Donovan and Terry O'Brien waived their right to speak due to limited time as a result of the delayed start to the meeting.

Cllr. Paul O'Donoghue said that a mast was located 1.5 KM from his own house. With regard to the access, Cllr. O'Donoghue said that if unauthorised the Planning Authority was duty bound to initiate enforcement action. He said that Court proceedings had issued in the case of individuals who had installed unauthorised velux windows therefore the same law should apply to the large company in this case. The Planning Authority should seek an immediate Injunction requiring that all works should cease pending the regulation of the development.

Mr. Michael McMahon Director of Planning & Sustainable Development said that he took grave offence at the members assertions that Kerry County Council was over friendly with H3G. Along with taking the remarks personally, Mr. McMahon said that they were also offensive to his staff in the Planning Department and to the County Manager.

He said that he and County Manager, Tom Curran had met with representatives of H3G for a pre-planning discussion about 2 years ago. As the applicant was the National Broadband Scheme provider, issues concerning the 1km rule were discussed. He stated that the company had enquiries as to whether or not the management would be prepared to propose Material Contraventions for masts. He said that it was a democratic decision of the members of Kerry County Council that the 1km rule in respect of the location of telecommunication masts would be included in the County Development Plan and that the company was informed that Material Contraventions would not be proposed. He said that management of the Planning Authority had not met or spoken to anybody in H3G since that meeting.

Mr. McMahon said that it was not just one of the Councillors who had made allegations of the existence of a two tier planning system and he absolutely and categorically denied any over friendliness with the company in question, H3G.

Mr. McMahon referred to the questions raised by the members on behalf of the residents group and said that the majority had already been addressed by him.

With regard to the alleged unauthorised development, he said that the site had been inspected a number of times County Manager, Tom Curran, Director of Corporate Services, Mr. John Flynn and by himself, had all were satisfied that no unauthorised development had taken place other than the access track.

He said that new entrance was considered exempted development under Articles 9(1)(a)(ii) of the Planning & Development Regulations 2001 as the surface width of the public road at this location does not exceed 4m

Cllr. Toireasa Ferris asked if she or any property owner could break another entrance to their property/house if the surface width of the public road was less than 4m.

Mr. McMahon said that if the new entrance created a traffic hazard, it would not be considered exempted development.

Cllr. Michael Healy Rae said that the surface width of the road in question was 6.5m in places.

Mr. McMahon said that the surface width of the public road where the entrance is located did not exceed 4m.

He said that a Warning Letter had issued to the developer on the 14th January 2011. requiring that the new created access track be restored to its previous condition by re-grading the track with topsoil and reseeding.

Mr. McMahon said that he had also received legal correspondence regarding this matter, to which he had replied

With regard to seeking a Court Injunction as suggested by Cllr. O'Donoghue, Mr. McMahon said that this would not be feasible as there was no evidence of unauthorised development in this case. Furthermore, everyone concerned had the same right as the Local Authority to take Court proceedings and to seek injunctive relief.

Cllr. Michael Healy Rae said that taking Court proceedings may not be an option for any of the individual members of the residents group.

Mr. McMahon said that he had a responsibility to protect the resources of Kerry County Council and in the absence of any evidence of unauthorised development neither he, the County Manager or the Director of Corporate Services was prepared to incur the costs involved in initiating Court proceedings

Cllr. Jim Finucane said that while he had waived his right to speak earlier on he now wished to make a proposal. He said that the situation had arisen because of the inability of the company to interact with the local community and proposed that Kerry County Council would write to the management of H3G to request that they would meet with the Kilcummin Concerned Residents Group and the members of Kerry County Council to discuss issues of concern to the residents.

Cllr. Toireasa Ferris seconded Cllr. Finucane's proposal

Mr. John O'Connor Deputy County Manager said that the proposal made by Cllr. Finucane was the most helpful suggestion that had been put forward since the meeting commenced. If all the members so wished, a request would be made to the company by the Meetings Administrator, as suggested by Cllr. Finucane.

Mr. O'Connor said that with regard to the new access, as it was exempted development, there was no legal case to answer, therefore there was no reason for the Council to seek legal advice or to initiate Court proceedings. With regard to the road/track he said that a Warning Letter had issued to the developer and the Planning Enforcement Officer noted that landowner had spread topsoil over the track to comply with Warning Notice.

Cllr. PJ Donovan agreed with Cllr. Finucane's proposal and asked if consideration could be given relocating the mast to an alternative site, e.g. 100 meters further back.

Mr. McMahon said that any re-location of the site for the development would be subject to a separate planning application.

Cllr. Donovan said that this option should be considered and the company should be required to apply for planning permission on a site which was more acceptable to the local community.

Cllr. Brendan Cronin referred to Mr. McMahons remarks and said that he would ask any questions which he felt were needed to be asked, on behalf of the Kilcummin Concerned Residents Group. He had not said anything that had not been said previously. It was unfortunate if Mr. McMahon was upset by his remarks but Cllr. Cronin reminded him that whether Mr. McMahon liked it or not, he was a public servant.

Cllr. Cronin asked if H3G had planning permission to enter through the new entrance and traverse over land to facilitate construction.

Cllr. Cronin made the following proposal

As the new access/entrance is being used by H3G to construct a commercial business:

That the exemption status on the access road/track be rescinded and that appropriate enforcement action be taken.

Cllr. Tom Fleming, SECONDED Cllr. Cronin's proposal.

Cllr. Toireasa Ferris said that she supported the sentiment of Cllr. Cronin's proposal and would have liked to have SECONDED it.

Cllr. Ferris referred to the relevant legislation under which the access in this case was considered exempted development i.e. Articles 9(1)(a)(ii) of the Planning & Development Regulations 2001 and asked if it would be possible for Councillors to have a briefing on planning legislation with a view to gaining a better understanding of decisions made by the Planning Authority.

Mr. Ger O'Brien, Meetings Administrator said a seminar was listed on the February 2011 agenda for Councillors to register for training on the Planning & Development (Amendment) Act 2010 as the elected members will be considering the adoption of essential requirements of the Act (e.g. core strategies in development plans) and the Department wishes to provide practical training to assist them in the discharge of their statutory roles

Cllr. Brendan Cronin clarified that the construction of an access onto a roadway where the surface width does not exceed 4m does not require planning permission but the construction of a roadway/track through the land does require planning permission.

Cllr. Paul O'Donoghue pointed out that the roadway/track had been constructed on agricultural land but was not being used for agricultural traffic.

Mr. Michael McMahon Director of Planning & Sustainable Development reminded the members that the Planning Authority had never declared that the access track was

exempt from planning permission and following on from a complaint received on 7th January 2011 and site inspection on 10th January 2011 when Planning Enforcement Officer noted that about 80m of access road was constructed which was not exempted development, a Warning Letter issued to the developer on the 14th January 2011 requiring that the new created access track be restored to its previous condition by re-grading the track with topsoil and reseeded.

Cllr. John Brassil said that he had absolute confidence in the management and staff of the Planning Department and agreed that taking legal proceedings was not an option for Kerry County Council as there was no evidence of unauthorised development and the Planning Enforcement Officer had noted that the landowner had spread topsoil over the track to comply with Warning Notice
Cllr. Brassil proposed that management of the Planning Department would carry out a full and final review of this application.

Cllr. Brendan Cronin asked if the trunking had been removed from the new access track.

Cllr. Michael Gleeson asked if the reinstatement of the road had been carried out to the sufficient depth.

Cllr. Brendan Cronin said that he wished to re word his previous proposal as follows:

*“As the new access road/track which is being used by H3G to construct a commercial business at Buddaghauns, Kilcummin does not have planning permission:
I propose that Kerry County Council rescind the exemption status on this access road/track and take the appropriate enforcement action as would be done in similar situations”*

Deputy Mayor, Cllr. Maria Moloney declared that the following two proposals had been SECONDED and agreed:

1. Cllr. Jim Finucane: That Kerry County Council would write to H3G requesting that they would meet with the Kilcummin Concerned Residents Group and the members of Kerry County Council.

SECONDED by Cllr. Toireasa Ferris

2. Cllr. Brendan Cronin: As the new access road/track which is being used by H3G to construct a commercial business at Buddaghauns, Kilcummin does not have planning permission:

I propose that Kerry County Council rescind the exemption status on this access road/track and take the appropriate enforcement action as would be done in similar situations.

SECONDED by Cllr. Tom Fleming.

Mr. John O'Connor Deputy County Manager said that in light of the discussion which had taken place today, the Planning Authority would carry out a full review of the case

and should it transpire that any unauthorised development had taken place, enforcement procedures would be initiated immediately

Cllr. Michael Gleeson asked that the company would be requested that all works would be suspended until after the meeting as proposed by Cllr. Finucane, had taken place.

Mr. Ger O'Brien Meetings Administrator undertook to write to the management of H3G to request that they would meet with Kilcummin Concerned Residents Group and the Members of Kerry County Council and also requesting that the company would agree to suspend works until after the meeting had taken place.

Cllr. Brendan Cronin said that he accepted all that had been agreed.

Mr. Michael McMahon said that the meeting had commenced at 10.20 am and he had been first to speak and had informed the meeting at that stage that a Warning Letter had issued to the developer on the 14th January 2011 requiring that the new created access track be restored to its previous condition by re-grading the track with topsoil and reseeding. He reiterated that the Planning Authority was satisfied that there was no unauthorised development at the site and no further action was required.

The meeting concluded at 12.05 pm.

Gerard O'Brien
Meetings Administrator

Mayor of Kerry