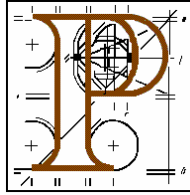


An Bord Pleanála



Inspector's Report

PL20.241658

Development: Continue of use of 30m high lattice support structure carrying GSM telecommunications equipment.

Location: Castleruby Townland, Tulsk, Co. Roscommon.

Planning Application

Planning Authority: Roscommon County Council

Planning Authority Reg. Ref. No: 12/441

Applicant: Meteor Mobile Communications Limited

Type of Application: Permission

Planning Authority Decision: Grant

Planning Appeal

Appellant: Meteor Mobile Communications Limited

Type of Appeal: First Party against condition

Observers: None

Date of Site Inspection None required

Inspector: Siobhan Carroll

1.0 SITE LOCATION AND DESCRIPTION

- 1.0.1 As the appeal only relates to a financial contribution a site inspection was not carried out in this instance. The appeal site is located in the townland of Castleruby, Tulsk Co. Roscommon approximately 5km to the west of the village of Tulsk.
- 1.0.2 The existing 30m high lattice communications structure is set within a compound with an area of 100sq m. The compound is defined by a 2.4m chain link fence. The site is accessed via a lane which runs for 560m off a local third class road.

1.1 THE PROPOSED DEVELOPMENT

Permission is sought to continue the use of 30m high lattice support structure carrying GSM telecommunications equipment.

1.2 THE PLANNING AUTHORITY'S DECISION

Internal Reports:

Environment Office – No objections

Chief Fire Officer – No objections

Submissions

The Planning Authority did not receive any submissions or observations in relation to the application.

Decision

The Planning Authority granted permission subject to 12 no. conditions. Condition no. 10 requires the payment of a development contribution of €12,500.00.

1.3 PLANNING HISTORY

Site

Reg. Ref. 07/2231 – Permission was granted for the retention of 30 meter high lattice support structure carrying GSM telecommunications equipment, associated equipment container and palisade fencing as previously granted under An Bord Pleanala Ref PL 20.202867 (Planning Reference number PD/02/677). Condition 7 required the payment of a development contribution.

7. *Within 3 months, the developer shall pay the sum of €11,770 updated at the time of payment in accordance with changes in the Wholesale Price – Building and Construction (Capital Goods), published by the Central Statistics Office to Roscommon County Council as a contribution towards the expenditure that was incurred or is proposed by the Planning Authority in respect of providing public infrastructure and services.*

Payment of this contribution is subject to the provisions of the adopted Development Contribution Scheme.

Reason: It is considered reasonable that the developer should contribute towards the expenditure that is proposed to be incurred by the Council in respect of the provision of public infrastructure and services.

Reg. Ref. 02/677 & PL20.202867 – Permission was granted for the development of a 30 meter high lattice antennas support structure carrying GSM telecommunications equipment, associated equipment, container, palisade fencing and access track. Permission was granted subject to 8 no. conditions including condition no. 1 which limited the duration of the permission to five years.

2.0 PLANNING POLICY

2.1 Development Plan

The site is governed by the policies and provisions contained in the Roscommon County Development Plan 2008-2014. The policies in relation to telecommunications infrastructure is set out in Chapter 3 of the Development Plan.

Policy 80 seeks to work towards achieving the strategic aims as put forward in the Roscommon Broadband Strategy “the role out of broadband within County Roscommon”.

2.2 National Policy

National Guidelines

Telecommunications Antennae and Support Structures Guidelines for Planning Authorities, July 1996

The guidelines essentially support the development of telecommunication services in the country and provide guidance on site selection and minimising environmental impacts.

2.3 DEVELOPMENT CONTRIBUTIONS

On the 24th of November 2008, Roscommon County Council adopted a Development Contributions Scheme in accordance with *Section 48 of the Planning and Development Act 2000*. The Scheme indicates the financial contributions, which Roscommon County Council may include as conditions of planning permission, in respect of specific infrastructure and facilities benefiting development in the area, which Roscommon County Council has already provided or that it is intended will be provided by, or on behalf of, Roscommon County Council.

2.3.1 Development Management – Guidelines for Planning Authorities, 2007

Section 7.12 refers to conditions requiring development contributions (sections 48 and 49 of the Planning Act 2000). Section 8.12 refers to appeals against contributions conditions.

3.0 APPEAL

A first party appeal has been lodged by Tiger International on behalf of the applicants Meteor Mobile Communications Limited. The main issues raised concern the following;

- The first party are appealing condition no. 10 under Section 48(10)(b) of the Planning and Development Act 2000.
- Permission was granted to Meteor Mobile Communications Limited under PL20.202867 (Reg. Ref. 02/677) for the telecommunications support structure carrying antennas, link dishes and equipment containers on site. Permission was granted for the retention of the structure under Reg. Ref 07/2231. Meteor applied for permission to continue of use of the structure under Reg. Ref. 12/441. Permission was granted on the 14th of February 2013.
- The original permission PL20.202867 (Reg. Ref. 02/677) and the subsequent renewal of permission Reg. Ref 07/2231 contained conditions which specified that the permission be temporary for a period of five years. The conditions were to enable the impact of the development to be re-assessed in light of changes in technology and design.
- The DOEHLG Guidelines for Planning Authorities 1996 and the reasoning of the abovementioned conditions clearly indicates that temporary permission was granted to allow for an evaluation of advances in technology and functional obsolescence.
- Meteor has demonstrated in the renewal application that the structure remains at cutting edge of design and function.
- Condition no. 10 requires a development contribution of €12,500.00 in lieu of a structure which has already been built in compliance with previous permission PL20.202867 (Reg. Ref. 02/677) and subsequent planning renewal Reg. Ref. 07/2231.

- Condition no. 7 of Reg. Ref. 07/2231 imposed a development contribution of €11,770.00 under Section 48 of the 2000 Act. The contribution was paid in full by Meteor. Accordingly, the development contribution has been paid in full and therefore condition 10 of Reg. Ref 12/441 should not apply.
- The Roscommon County Development Contribution Scheme does not allow for the provision of a development contribution on mast renewals. It allows for the implementation of such contributions on new developments which the existing structure is not.
- The permission granted under Reg. Ref. 12/441 allows for the continued use of the development. There has been no intensification or material change of use in the mast in the intervening period, therefore it would be incorrect to apply a further contribution on the development.
- They state that this consistent with the Board decision PL19.238292. In relation to that Board decision it was stated *“the appropriate development contribution had already been paid in respect of this development and it would be an unreasonable interpretation of the Development Contribution Scheme to require a further contribution in these circumstances.”*
- Reference is made to Circular Letter PL07/12 dated 19th of October 2012 and the applicants state that the Letter states that all future Development Contributions Schemes must include waivers for broadband infrastructure provision and these waivers are intended to be applied consistently across all local authorities.
- Therefore for the reasons set out in the appeal submission the applicants request that the Board remove condition no. 10 from the permission.

Further submission from the first party in response to the submission of the Planning Authority

- The comments of the Planning Authority are noted, however the development contribution has already been applied and to apply a further contribution would be an unreasonable interpretation of the development contribution scheme.
- The submission reiterates the issues discussed in the appeal.

3.1 Planning Authority Response submission

A response to the first party appeal was submitted by the Planning Authority on the 15th of March 2013. The main issues raised concern the following;

- Roscommon County Council’s Development Contribution Scheme applies to all development. In particular Section 13 of the Roscommon County Council Development Contribution Scheme states that, “in general all applications received by Roscommon County Council will be subject to the Development Contribution Scheme and included as a condition under any permission issued under Section 34 of the Planning and Development Acts 2000-2007.”

- The appellant is incorrect in the assertion that “the Scheme does not allow for the imposition of a development contribution on mast renewals that it simply allows for the implementation of such contributions on new developments.” This is a misreading of the Scheme which it should be noted applies to all developments whether new or not.
- Section 19 of the scheme sets out the exemptions from the Development Contributions and none apply to telecommunications equipment.
- There are no exemptions in the scheme for developments which had previously been granted planning permission for limited time period, regardless of whether contributions were levied or paid on that previous permission.
- Table 5 of the Scheme sets out the different classes of development. Category D – communications mast is €12,500 per mast. The Planning Authority consider that all communication masts which are the subject of a grant of permission fall within Category D.
- Class D in Table 5 refers simply to “Communication Masts” and does not in any way limit the application of the Scheme to the construction of new masts.
- Any interpretation of Table 5 which concludes that it only included the construction of new masts would be at variance with the actual meaning of the words in the Scheme as written and adopted by the members of Roscommon County Council.
- In terms of previous decisions of An Bord Pleanála. The Bord has removed conditions in circumstances similar to the subject appeal, however the Planning Authority consider the Bord were incorrect in the previous decisions and these should not be used as a precedent.
- Circular Letter PL/07/12 of 19th October 2012 relates to the making of future development contribution schemes and has no effect on the operation of the existing scheme, which is the sole subject of this appeal. The circular letter does not as suggested in the appeal recommend that the imposition of conditions in relation to development contributions should cease from the date of the circular.

4.0 ASSESSMENT

- 4.0.1 This is a first party appeal made against 1 no. condition relating to development contributions under Section 48 of the Planning and Development Act, 2000. This appeal concerns the continuation of use of an existing telecommunications support structure carrying antennas, dishes and including equipment containers. The proposed development is in accordance with the Development Plan policy and is considered acceptable in principle. Accordingly, I am satisfied that the appeal can be confined to the matters

concerning the specific condition which the first party has appealed. Accordingly, I recommend that this case be treated under Section 48 of the Planning and Development Act, 2000.

4.0.2 **Condition No. 10**

Condition No. 10 is as follows;

10. *Within three months from the date of this permission, the developer shall pay the sum of €12,500 updated at the time of payment in accordance with changes in the Wholesale Price-Building and Construction (Capital Goods), published by the Central Statistics Office to Roscommon County Council as a contribution towards the expenditure that was incurred or is proposed by the Planning Authority in respect of providing public infrastructure and services.*

Payment of this contribution is subject to the provisions of the adopted Development Contribution Scheme.

Reason: It is considered reasonable that the developer should contribute towards the expenditure that is proposed to be incurred by the Council in respect of the provision of public infrastructure and services.

- 4.0.3 Accordingly, condition No. 10 requires the payment of €12,500.00 in respect of the provision of public infrastructure and facilities under the terms of the Roscommon County Council Development Contribution Scheme. The appellants argue that as the proposal is for the continuation of use of an existing telecommunications support structure that a further development contribution should not be levied in respect of the development. They state that under Reg. Ref. 07/2231 permission was granted for the retention of the 30 metre high lattice antennae support structure and development contribution of €11,770.00 was levied under condition no. 7. The appellants state that the development contribution was paid in full. The appellants cite the Board decisions PL19.238292 relating to the retention of telecommunications antennae as a similar case.

- 4.0.4 The Planning Authority has submitted a response to the points set out in the first party appeal. They note the provisions of the Development Contributions Scheme specifically Section 13 which states that all applications received will be subject to the Development Contribution Scheme except those to which a full or partial exemption apply as set out in Section 19. The exemptions apply to housing, social, community and educational developments by voluntary and not-for-profit groups. They consider that the condition was attached in accordance with the terms of the Development Contributions Scheme and that there are no exemptions on the grounds that application is for retention or continuation of use. Therefore the Planning Authority contend that the application for the continuation of use of the telecommunications support structure does not come within the category of development to which exemptions apply and a contribution of €12,500 per mast applies as set out in Table 5 (D).

- 4.0.5 In relation to the provisions of the Development Contribution Scheme, I note that Table 5 (D), refers a charge of €12,500 per mast. The Board adjudicated on this matter in relation to recent appeal cases for retention of the

telecommunications masts and antennas including PL20.239245 & PL20.240318 (Co. Roscommon) and determined that development contributions for the retention of such infrastructure should not be levied as the terms of Development Contribution Schemes did not provide for it.

- 4.0.6 Under Reg. Ref. 11/164 (PL20.239245) permission was granted by the Planning Authority for the retention of a 26m lattice tower with associated equipment cabinets and fencing, which was previously granted under a five year temporary permission (planning reference PD.05/1587) at Knockadoobrusna Townland, Boyle, County Roscommon. Condition no. 14 was attached requiring the provision of a contribution of €12,500. The first party appealed the condition under PL20.239245.
- 4.0.7 The Board decision in relation to that case was to require the removal of condition no. 14. The Board considered that the proposed development for retention was a telecommunications mast, for which planning permission was granted in 2006 on a temporary basis. Under the original permission Register Reference PD/05/1587, Condition 14 required a development contribution to be paid, prior to commencement of development in accordance with the *Scheme of Development Contributions Under Section 48 of the Planning and Development Acts, 2000-2002*. Table 5, F of that scheme stated the contribution was €10,000, per mast. Development contributions were to be paid prior to commencement of development. The current Roscommon County Council Development Contribution Scheme, 2008 similarly requires a development contribution of €12,500 per mast in Table 5, D, and requires contributions to be paid prior to commencement of development. The Board concluded that Table 5 D requires a single development contribution per mast and that in the absence of a specific provision in the development contribution scheme, stating the renewal of permission for an existing mast requires a further development contribution, the Board considers the imposition of a further financial contribution, would be an unreasonable interpretation of the development contribution scheme.
- 4.0.8 Under Reg. Ref. 11/327 (PL20.240318) permission was granted by the Planning Authority for the retention of a 21m monopole communications structure with associated equipment cabinets and fencing, which was previously granted under a five year temporary permission (planning reference Reg. Ref 05/697 & PL20.216710) at Casheltauna townland, Four Mile House, County Roscommon. Condition no. 6 was attached requiring the provision of a contribution of €12,500. The first party appealed the condition under PL20.240318.
- 4.0.9 The Board decision in relation to that case was to require the removal of condition no. 6. The Board considered that the proposed development for retention was a telecommunications mast, for which planning permission was granted in 2006 on a temporary basis. Under the original permission Register Reference PD/05/697 & PL20.216710, Condition 6 required a development contribution to be paid, prior to commencement of development in accordance with the *Scheme of Development Contributions Under Section 48 of the Planning and Development Acts, 2000-2002*. Table 5, F of that scheme stated the contribution was €10,930, per mast. Development contributions were to be paid prior to commencement of development.

4.0.10 The Board concluded that Table 5 D of Roscommon Development Contribution Scheme requires a single development contribution per mast and that in the absence of a specific provision in the development contribution scheme, stating the renewal of permission for an existing mast requires a further development contribution, the Board considers the imposition of a further financial contribution, would be an unreasonable interpretation of the development contribution scheme.

4.0.11 Accordingly, having regard to the above cited relevant recent Board decisions and also the provisions of the Development Contribution Scheme specifically Table 5 D which requires the payment of a single development contribution per mast and also in the absence of a specific provision in the development contribution scheme, stating the renewal of permission for an existing mast requires a further development contribution, therefore the imposition of a further financial contribution, would be an unreasonable interpretation of the development contribution scheme. In conclusion therefore, the terms of the development contribution scheme, have not been properly applied.

5.0 Recommendation

Having regard to the submissions on file, the planning history and terms of the Development Contribution Scheme for the area and all other matters arising. The Board considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of Condition Number 10 and directs the said Council under subsection (10) (b) of section 48 of the Planning and Development Act, 2000, as amended, by section 30 of the Planning and Development Act, 2010 to REMOVE the said condition number 10 and the reason therefore.

Reasons and Considerations

The proposed development is for the continuation of use of a telecommunications mast, for which planning permission was granted in 2008 on a temporary basis, in order to review the impact of the mast, having regard to changes in technology. In that permission, Register Reference PD/07/2231, Condition 7 required a development contribution to be paid, within three months of the obtaining of permission in accordance with the provisions of the adopted Contribution Scheme. Table 5, E of that scheme stated the contribution was €11,770 per mast. The current Roscommon County Council Development Contribution Scheme, 2008 similarly requires a development contribution of €12,500 per mast in Table 5, D, and requires contributions to be paid prior to commencement of development. The Board considers that Table 5 D requires a single development contribution per mast. In the absence of a specific provision in the development contribution scheme, stating the renewal of permission for an existing mast requires a further development contribution, the Board considers the imposition of a further financial contribution, would be an unreasonable interpretation of the development contribution scheme. The terms of the development contribution scheme, therefore, have not been properly applied.

Siobhan Carroll,
Inspectorate
18th of June 2013