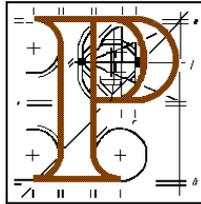


## An Bord Pleanála



## Inspector's Report

<b>Development:</b>	Retain 21m high telecoms mast at Monasootha, Ballybeg, County Wexford
<b>Planning Authority:</b>	Wexford County Council
<b>Planning Authority Reg. Ref.:</b>	2014/0653
<b>Applicant:</b>	Telefonica Ireland Limited
<b>Type of Application:</b>	Permission
<b>Planning Authority Decision:</b>	Grant with Conditions
<b>Appellant(s):</b>	Telefonica Ireland Limited
<b>Type of Appeal:</b>	Applicant vs Conditions
<b>Observers:</b>	None
<b>Date of Site Inspection:</b>	None
<b>Inspector:</b>	Hugh Mannion

## **1. SITE LOCATION AND DESCRIPTION**

The site is located at Monasootha, Ballybeg, County Wexford. Ferns is located to the south and Gorey is located to the east.

## **2. THE PROPOSED DEVELOPMENT**

The proposed development comprises the retention of a 21m high telecommunications mast and associated equipment.

## **3. PLANNING HISTORY**

Permission was originally granted for this mast as a replacement for a preexisting mast under reference number 2003/1008 (PL26.203324). The Board did not impose a contribution condition in that instance.

Permission was granted for the retention of this telecoms mast on the 8<sup>th</sup> May 2009 under reference number 20090136. That grant required the payment of a contribution towards roads (€1,062) and community facilities (€442.50).

## **4. THE PLANNING AUTHORITY'S DECISION**

The planning authority decided to grant permission subject to 6 conditions.

Condition 3 required the payment of a contribution of €1,500 towards public roads.

Condition 4 required the payment of a contribution of €1,500 towards community facilities.

## **5. GROUNDS OF APPEAL**

The grounds of appeal may be summarized as follows;

- The original permission was granted under reference number 2003/1008 (PL26.203324) and the Board did not impose a contribution condition in that instance. A subsequent permission for retention under application reference number

20090136 was granted. That grant required the payment of a contribution towards roads and community facilities. That contribution was paid. The present application (application reference number 20140653) refers only to the continued use of the previously permitted development.

- A contribution condition is inappropriate in this instance. In a similar case (PL19.238292) the Board decided that no further contributions were appropriate as a development contribution had already been paid.
- The DoEHLG Circular letter PL07/12 recommended that attaching contribution conditions to permissions for telecoms masts providing broadband should cease.

## **6. PLANNING AUTHORITY'S RESPONSE TO APPEAL**

The planning authority commented on the appeal as follows;

- No contribution was sought in relation to the application under 20031008 which referred to the replacement of a 15m mast with a 21m mast.
- Contributions towards roads and community facilities were not sought for the retention of the mast because it was less than 50m high but were applied to the 88.5m<sup>2</sup> of cabin space containing generator equipment.
- Since no previous contribution was applied to the mast it is now appropriate to do so.
- Since, notwithstanding Circular letter PL07/12, the Board granted a temporary permission in PL26.242719 a similar temporary permission is being granted in this case and the contribution is being reduced by 50% accordingly.

## **7. FURTHER SUBMISSIONS**

The applicant was given an opportunity to comment on the planning authority's submission. The reply may be summarized as follows;

- The point made by the planning authority that the previous contribution only referred to equipment containers is incorrect. The previous contribution and the contribution subject to this appeal are both for roads and community facilities. The appealed contribution arises from an incorrect application of the contribution scheme.
- A development contribution has been paid previously in respect of this mast. There has been no material change in the nature of the development and therefore this contribution is unjustified and conflicts with the decision in PL19.238292 that where a contribution has been paid previously no further contribution is due.
- Circular letter PL07/12 recommended that contributions not be attached to telecommunications masts.

## **8. OBSERVATIONS**

There are no observations on file.

## **9. PLANNING POLICY FRAMEWORK**

The relevant Development Contribution Scheme is the Wexford County Council Contribution Scheme 2013.

## **10. PLANNING ASSESSMENT**

**10.01** Under PL26.203324 (application reference number 20031008) permission was granted on appeal for the replacement of an existing 15m high telecoms mast with a 21m high lattice support structure with 11 transmission link dishes. No contribution was required in that case.

**10.02** Under application 20090136 an application was made to retain the 21m high telecoms mast. In that case the planning authority

imposed a contribution only on the 88.4m<sup>2</sup> cabin containing a generator; masts under 50m high were exempt under the contribution scheme. By common consent of the parties in the present case that contribution was paid.

**10.03** Having regard to the submitted drawings which enclose the mast and associated equipment containers within the 'red line' and the detailed drawings of these containers accompanying the application I conclude that this application relates to all the equipment on site shown in the lodged drawings. The planning authority has imposed a condition limiting the lifetime of the permission to 5 years. Furthermore two conditions (numbers 3 and 4) requiring the payment of contributions in respect of public roads and community facilities were also imposed.

**10.04** The planning authority's case is that these conditions arise from the provisions of the Wexford County Council Development Contribution Scheme 2013. The scheme requires the payment of €1,500 towards roads where a temporary permission is granted for telecommunications masts. Furthermore the scheme requires the payment of €1,500 towards recreational and community facilities where a temporary permission is granted for telecommunications masts.

**10.05** The Wexford County Council Development Contribution Scheme 2013 (made on the 14<sup>th</sup> October 2013) states in its preamble that it will have regard to the Development Contributions Guidelines for Planning Authorities issued by the DoECLG in January 2013. These guidelines were issued under Section 28 of the Planning and Development Act 2000 as amended and **require** (emphasis in the guidelines) planning authorities to provide waivers from contributions for telecommunications masts and antennae related to broadband infrastructure. Furthermore the guidelines state that the practice of 'double charging' is inconsistent with the primary objective of levying development contributions.

**10.06** The application form submitted with the application (see question 9 on that form) stated that the application related to the provision of broadband infrastructure and this point was reiterated in the grounds of appeal. The planning authority does not dispute this point.

**10.07** The planning authority disaggregated the application to distinguish between the mast and the associated equipment and has argued (see appeal response submission) that it is now appropriate to

impose a contribution condition on the mast since only the equipment containers have heretofore been subject to a contribution.

**10.08** There is no distinction in the current Wexford County Council Development Contribution Scheme between masts of greater or lesser heights as there was previously; likewise there is no distinction between masts and associated equipment containers.

**10.09** Having regard to the foregoing I conclude that the Wexford County Council Development Contribution Scheme is ambiguous in that it states that it will have regard to the Development Contribution Guidelines but has not explicitly done so in a manner to explicitly remove broadband infrastructure or 'double charging' from its scope.

The case *Cork City Council v An Bord Pleanála and O'Flynn Construction*<sup>1</sup> is relevant here. The High Court found in that case that the Board is limited to considering the provisions of the adopted development contribution scheme when considering appeals under Section 48. Notwithstanding the decision in that instance I consider that there is such ambiguity in the Development Contribution Scheme as between the stated objective to have regard to the Section 28 guidelines and other provisions of the scheme to allow the Board to conclude that the provisions of the scheme were not properly applied.

## **11. RECOMMENDATION**

Since the present application relates to the provision of broadband infrastructure and the contributions sought by the planning authority appear to comprise 'double charging' by the planning authority I recommend that the development contribution scheme is sufficiently ambiguous for the Board to find that the terms of the scheme have not been properly applied in this instance and direct the removal of conditions 3 and 4 and the reasons therefore for the reasons and considerations set out below.

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<sup>1</sup> Copy of judgement attached

## **Reasons and Considerations**

The Wexford County Council Development Contribution Scheme 2013 states that it will have regard to the provisions of the Development Contributions Guidelines for Planning Authorities issued by the DoECLG in January 2013. These Guidelines require an exemption from the requirement to pay development contributions in the case of applications related to the provision of broadband infrastructure and the avoidance of 'double charging' where contributions have been paid previously in relation to a particular development.

The proposed development relates to the retention of telecommunications equipment which contributes to the provision of broadband infrastructure in the area and a development contribution has previously been paid in respect of the telecommunications equipment the subject of this application. Having regard to these factors the Board is not satisfied that the terms of the Development Contribution Scheme have been properly applied.

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Hugh Mannion  
Planning Inspector  
20<sup>th</sup> January 2015