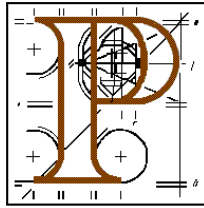


An Bord Pleanála



Inspector's Report

Development: Retention of an existing 24m high multi-user telecommunications support structure.

Location: Cartron, Ballinafad, County Sligo

Planning Application

Planning Authority: Sligo County Council

Planning Authority Reg. Ref.: 15/342

Applicant: Vodafone Ireland Ltd.

Type of Application: Permission

Planning Authority Decision: Grant Permission with conditions

Planning Appeal

Appellant: Vodafone Ireland Ltd.

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Type of Appeals: 1st v Conditions

Date of Site Inspection: No inspection required.

Inspector: Dolores McCague

1 SITE LOCATION AND DESCRIPTION

- 1.1 The site is located in the townland of Cartron, Ballinafad, Sligo. Per planner's report, the site is located c 1km south of Ballinafad village. The N4 runs directly to the north of the site.
- 1.2 As the appeal only relates to a financial contribution a site inspection was not carried out in this instance.
- 1.3 The site is given as 0.041ha.

2 PROPOSED DEVELOPMENT

- 2.1 The application is for retention of an existing 24m high multi-user telecommunications support structure with head frame, carrying associated antennae and link dishes, associated equipment cabin; within secure compound and access track.

3 PLANNING AUTHORITY DECISION

- 3.1 Application lodged 6th October 2015.
- 3.2 Technical reports:
- 3.3 Roads – no objection.
- 3.4 Environment Section - no objection.
- 3.5 Area Engineer 9/11/15 – recommending permission.
- 3.6 Planning report 19/11/2015 includes:

The structure was previously permitted under PL 97/107, PL 02/988 and PL08/342 which expired on September 10th 2013.

Under condition 6 of PL97/107 the applicant was required to pay a bond of €4,000. A development contribution was not attached to any of the permissions granted: i.e. under PL97/107, PL 02/988 or PL08/342

- 3.7 The planning authority decided to grant permission subject to 3 conditions including:

Condition no. 3

Within two months of the date of the grant of this permission, the developer shall pay the sum of €15,000 (fifteen thousand euro) to Sligo County Council as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefitting development in the area of the planning authority, in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000 (as amended).

€4,000 Town /Village Improvements, Car-parking/Roads.

€11,000 Community Facilities.

Reason: It is a requirement of the Planning & Development Act 2000 (as amended) that a condition requiring a contribution, in accordance with the Development Contribution Scheme made under Section 48 of the Act, be applied to the permission.

- 3.8 The decision was in accordance with the planner's recommendation.

4 PLANNING HISTORY

PL97/107 temporary permission

PL 02/988 temporary retention permission

PL08/342 temporary retention permission

5 PLANS AND POLICIES

5.1 The **Sligo County Development Plan 2011-2017** is the statutory Development Plan for the area. The relevant sections of the plan as they apply to this development are as follows;

- Section 3.6.2 refers to Development Contributions Schemes
- Chapter 11 refers to Energy and Telecommunications

5.2 Development Contributions Scheme

Development Contributions Scheme 2011-2017 for the area within the County of Sligo and outside the Sligo and Environs area - Scheme A

The scheme is divided into Scheme B for Sligo Town/Environs and Scheme A for the county at large.

- This scheme was adopted on 5th September 2011. The Council will apply conditions requiring payment of the contributions provided for in the scheme to all relevant decisions to grant planning permission made on or after its adoption.
- Section 5.2 of the Scheme refers to Contributions which shall be levied in respect of other classes of development, including:

Telecommunication Masts - €15,000.00 per mast (€4,000 roads and €11,000 Community facilities).

- Section 5.10 refers to applications for planning permission to retain a development:
for planning permission to retain a development - development contributions under the Scheme will be payable in respect of any increase in gross floor space to that already permitted.

5.3 National Guidelines and Legislation

5.4 **Planning and Development Act 2000** as amended:

S 48 (1) of the Act refers to payment of a development contribution based on a scheme made under the section (2) (a).

5.5 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.

5.6 Circular Letter: PL07/12 – Telecommunications Antennae and Support Structures Guidelines.

The circular issued by the Minister on the 19th of October 2012 updates certain sections of Telecommunications Antennae and Support Structures Guidelines (1996) and includes reference to Draft Guidelines on Development Contributions; the principal aim of which is to provide updated guidance on the preparation of development contributions to reflect changed economic circumstances since guidance was last issued in 2007, and also to reflect the Government's focus on job creation and investment in infrastructure for the future.

5.7 Development Contributions Guidelines for Planning Authorities, 2013

These guidelines are intended inter alia to assist planning authorities to achieve, through their development contribution schemes, a balance between the costs of the services provided and the need to support economic activity; and include:

All planning authorities should commence a review of their existing development contribution scheme(s) by 31st March 2013 to ensure compliance with the content of this guidance.

Among the items planning authorities are required to include in their development contribution schemes are waivers for broadband infrastructure (masts and antennae).

However, no exemption or waiver should apply to any applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications.

Double charging - Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

5.8 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.

‘Although there is no entitlement to appeal against the principle of attaching a condition formulated in accordance with a general or supplementary scheme, the contribution requirements of any such scheme may be the subject of a valid appeal where the applicant considers that the terms of the scheme in question were not properly applied.’

6 GROUNDS OF APPEAL

6.1 A first party appeal against the decision of the planning authority to attach condition no. 3 has been submitted by 4 Site Telecoms on behalf of Vodafone Ireland Ltd. The first party is appealing condition no. 3 under Section 48(10)(b) of the Planning and Development Act 2000. The grounds includes:

- The planning history is referred to.
- The Development Contribution Scheme is ambiguous in not referring to development/ retention/ continuance of use.
- There is reference to retention in the scheme which refers to increased floor space and is ambiguous.

- The Development Contributions Guidelines and Circular Letter require waivers for broadband infrastructure. Extracts are cited. Sligo County Council should by now have reviewed their scheme to comply with the guidelines. Since the initial construction on this site there has been no additional impact/pressure on the road network, as a result of 2 to 3 annual maintenance visits.
- It looks like Development Contributions are being use to fill gaps in council finance.
- The national broadband scheme under which this site was developed in 2008 resulted in economic development nationally in the order of:
 - €223 million spend in the economy over 5 years
 - 79 million contribution from the Irish Gov/EU
 - Over 170 direct jobs
 - Widespread benefits to economic development in rural areas.
- In the 97/107 permission a €4,000 bond was paid.
- Precedent is cited:
 - PL08.242185
 - PL21.241352
 - PL16.242860
 - PL16.242987
 - PL16.243914
- Any attempt to indicate this as a special contribution would be unjustified given that there has been no explanation.
- The planner's report notes the requirement for waivers but ignores it.

7 RESPONSES

7.1 The Planning Authority

- 7.1.1 The planning authority has responded (11th January 2016) to the grounds of appeal, stating that under condition 6 of PL97/107 the applicant was required to pay a bond of €4,000.
- 7.1.2 A development contribution was not attached to any of the permissions granted: i.e. under PL97/107, PL 02/988 or PL08/342.
- 7.1.3 The current Development Contribution Scheme, requires the payment of €15,000. They note the Guidelines on Development Contribution Scheme, but waivers can only apply when Development Contribution Schemes have been reviewed. The provisions of the current Development Contribution Scheme must apply.

8 ASSESSMENT

- 8.1 This is a first party appeal made against one condition relating to a development contribution under Section 48 of the Planning and Development Act, 2000.
- 8.2 This appeal concerns the retention of a 24m high multi-user telecommunications with head frame, carrying associated antennae and link dishes, associated equipment cabin; within secure compound and access track.
- 8.3 The proposed development is in accordance with the Development Plan policy and is considered acceptable in principle. I am satisfied that the appeal can be confined to the matters concerning the specific condition which the first party has appealed and that this case can be treated under Section 48 (13) (a) of the Planning and Development Act, 2000.
- 8.4 The previous permissions did not have attached any condition requiring the payment of a development contribution: PL97/107 permission; PL 02/988 retention permission; and PL08/342 retention permission; although a bond of €4,000 was paid.
- 8.5 Retention & Waivers**
- 8.6 The application is described to in the application form, published notice, site notice and in a letter accompanying the application as an application for 'retention'. Permission expired in September 2013 and the application was made in October 2015.
- 8.7 The Board will note that according to the Development Contributions Guidelines for Planning Authorities, 2013, waivers for broadband infrastructure (masts and antennae) are to be included in development contribution schemes; and all planning authorities were required to

commence a review of their existing development contribution schemes by 31st March 2013 to ensure compliance with the content of the guidance. There is no indication on the Sligo County Council website that such a review has commenced.

- 8.8 The Development Contributions Guidelines for Planning Authorities, 2013, requires waivers for broadband infrastructure (masts and antennae); but also states that such waivers should not apply to retention permissions.

8.9 Precedent

- 8.10 The appellant has referred to 'precedents' PL08.242185, PL21.241352, PL16.242860, PL16.242987 and PL16.243914.
- 8.11 PL08.242185 - in granting this permission to retain a mast in Kerry, which the planning authority had decided to refuse, the Board did not attach any Development Contribution condition. The inspector's report recommended that since the Board was considering the application *de novo* it should anticipate the amendment of the Kerry County Council Development Contribution Scheme and not apply a contribution in accordance with the Circular Letter.
- 8.12 PL21.241352 - in this permission to retain a mast in Sligo the Board directed the planning authority to remove a condition requiring the payment of a Development Contribution; stating that the Development Contribution Scheme does not provide for payment of repeated contributions in respect of the same mast. The previous temporary permission PL21.221753, required the payment of a Development Contribution.
- 8.13 PL16.242860 - in this permission to retain a mast in Mayo, the Board directed the planning authority to remove a condition requiring the payment of a special development contribution; in the absence of evidence that specific exceptional costs would be incurred.
- 8.14 PL16.242987 - in this permission to continue the use of three radio aerials and one dish attached to an existing support structure together with associated equipment previously granted, in Mayo, the Board directed the planning authority to remove a condition requiring the payment of a special development contribution; in the absence of evidence that specific exceptional costs would be incurred
- 8.15 PL16.243914 - in this permission to retain a mast in Mayo, the Board directed the planning authority to remove a condition requiring the payment of a special development contribution; in the absence of evidence that specific exceptional costs would be incurred

8.16 The Board will note that in several of the precedents cited by the first party, the condition removed was in respect of a special development contribution (48(2)(c)); in one case the condition was removed where a contribution had previously been paid; in the other case the Board was considering the application *de novo*.

8.17 In the present case the Board is not considering the application *de novo*, and the matter to be determined by the Board is whether or not the development contribution scheme, has been properly applied.

8.18 Development Contribution Scheme

8.19 There is no exemption in the current development contribution scheme for masts.

8.20 There is reference to retention in the current development contribution scheme, but it refers to levying only any increase in gross floor space to that already permitted under a grant of planning permission. No additional floor area is involved in the current application, but it would be inappropriate to regard the provision as applying to this case. The development contribution scheme includes charges which are applied by floor area and are given as amounts per m². It is to such retention applications that the reference applies. The charge applying to masts is a single charge of €15,000 per mast.

8.21 No double charging is involved as a contribution was not previously paid.

8.22 As this is an application for retention, no breach of the guidelines arises.

8.23 The requirement for the payment of a contribution is clearly set out in the Development Contribution Scheme. In my opinion the terms of the Development Contribution Scheme have been properly applied.

8.24 Wording of Condition

The wording of Condition no. 3 as cited at paragraph 3.7 above should be amended to reflect a format consistent with previous Board decisions.

9 RECOMMENDATION

- 9.1 On the basis of my assessment, I recommend that the Board should determine as follows:

DECISION

The Board considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had been properly applied in respect of condition number 3 and directs the said Council under subsection (10) (b) of section 48 of the Planning and Development Act, 2000 to **AMEND** the said condition number 5 so that it shall be as follows for the reason stated.

The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid within one month of the date of this permission or in such phased payments as the planning authority may facilitate. The amount of the contribution shall be €15,000 (fifteen thousand euro) subject to any applicable indexation provisions of the Scheme from the date of the schemes adoption. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

REASONS AND CONSIDERATIONS

It is considered that:

- (a) the terms of the Development Contribution Scheme were correctly interpreted in respect of condition number 3, insofar as the development is subject to a financial contribution under the Scheme, and

- (b) the Scheme does not provide for any exemptions in respect of retention permissions for telecommunications support structures, and
- (c) a development contribution was not levied under any previous permission for this structure.

It is further considered that the wording of the condition should be amended to reflect the format of previous Board decisions.

Dolores McCague
Inspectorate

Date