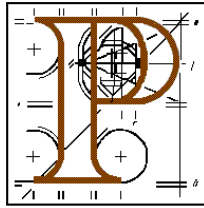


An Bord Pleanála



Inspector's Report

Development: Retention of an existing 24m high telecommunications support structure with antennas.

Location: Annaghmore, Cooloney, Sligo

Planning Application

Planning Authority: Sligo County Council

Planning Authority Reg. Ref.: 15/350

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 Annaghmore, Cooloney, Sligo. Per planner's report, the site is located c 3km from Colooney along the N17 from which it is visible to the west but obscured to the east by a small dense woodland.
- 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 0.016ha.

2 PROPOSED DEVELOPMENT

- 2.1 The application is for retention of an existing 24m high telecommunications support structure with antennas, equipment container and associated equipment; with a fenced compound and access track.

3 PLANNING AUTHORITY DECISION

- 3.1 Application lodged 12th October 2015.
- 3.2 Technical reports:
- 3.3 Roads Design 17th November 2015 - the previous report still stands. The statutory process for the N17 is suspended at the moment but could be initiated at any time. As the mast is along a national road corridor, and potentially impacted by any future upgrade to the N17 this could constitute an exceptional case (to the national guidance to cease temporary permissions).

3.4 A copy of the previous report referred to (18/3/2010) is attached. It refers to an application to retain an existing telecommunications tower. The Roads Design Department have no objections to permission however the applicant should be advised that the tower is in close proximity to a side road of the proposed N17 Collooney to Tobercurry realignment Scheme which is currently at preliminary design / EIS stage. While an impact is avoidable with the current preliminary design, future permission for retention may be affected by alignment design or cross section changes should they be required.

3.5 Planning report 18/11/2015 includes:

The structure was previously granted a 5 year permission by the Board PL21.210776 planning authority reg. ref. PL04-1205 (decision to refuse).

Previous refusal PL04-254.

A five year retention was granted under PL10-28.

3.6 Area Engineer 5/11/15 – recommending permission with conditions.

3.7 The planning authority decided to grant permission subject to 5 conditions including:

Condition no. 2

The permission is for a temporary period of 5 years.

Condition no. 5

Prior to the commencement of development, 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 (2)(c) 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

PL04-254- refusal of permission.

PL21.210776 (PL04-1205) 5 year permission granted by the Board (no contribution condition).

PL10-28 five year retention granted, expired 19th March 2015, (no contribution condition).

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 contribution schemes 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. 5 has been submitted by FocusPlus Ltd on behalf of Vodafone Ireland Ltd. The first party is appealing condition no. 5 under Section 48(10)(b) of the Planning and Development Act 2000. The grounds includes:

- The development has been in place for 10 years and permission has been granted on two previous occasions.
- The Sligo County Development Contribution Scheme 2011-2017 does not allow for the imposition of a development contribution on mast renewals. It allows for the implementation of such contributions on new developments which this structure is not.
- The condition states '*prior to the commencement of development*'; which indicates that the condition relates to new development. The applicant acknowledges that no development contributions were paid for this mast on the previous planning grants, however the applicant forms the opinion that it is unreasonable to look for development contributions for €15,000 retrospectively as though it was a completely new application 11 years after the initial grant 04/1205. The 2006 development contribution for a mast was €6,800 (per condition no. 5 of PL21.221753 (a different development)). The applicant feels that they have been unduly penalised by this and if the 2010 application had been conditioned with a development contribution there would be no contribution applied to this current grant which results in an additional €8,200 being sought. The applicant is seeking to have the contribution associated with this appeal reduced to the contribution that should have been applicable in 2010 therefore the applicant is seeking a reduction of €8,200.

- Precedents include PL26.245309, PL26.245311 and PL09.214773.
- Circular PL07/12 recommends that levies are waived for the facilitation of broadband infrastructure. The subject application is for wireless 3G coverage and this will be enhanced to allow for 4G in the coming months.
- Levying operators every five years for providing a public service is unsustainable and will result in many operators questioning the feasibility of providing such services in the area.
- The Board is requested to reduce the contribution. Precedents set in relation to similar conditions applied by Mayo Co Co, Sligo Co Co, Clare Co Co and Roscommon Co Co reinforce the argument.

7 RESPONSES

7.1 The Planning Authority

7.1.1 The planning authority has responded (11th January 2016) to the grounds of appeal, referring the Board to the planner's report.

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. This appeal concerns the retention of a 24m high telecommunications support structure with antennas.

8.2 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.

8.3 PL 21.210776 which permitted the erection of the mast in 2005 for a temporary period of five years did not have attached any requirement for the payment of a development contribution. PL10/28 which permitted the temporary retention of the mast for a period of five years from 20th

March 2010 did not have attached any requirement for the payment of a development contribution.

8.4 Retention

8.5 The application is referred to in the application form, published notice, site notice and in a letter accompanying the application as an application for 'retention'. Permission expired in March 2015 and the planning application was made in October 2015.

8.6 The Development Contributions Guidelines for Planning Authorities, 2013, which require planning authorities to commence a review of their existing development contribution scheme(s) by 31st March 2013 and to include in their development contribution schemes waivers for broadband infrastructure (masts and antennae); also states that such waivers should not apply to retention permissions.

8.7 The Board may question whether or not it was the intention that this provision should refer to development which had a previous permission which had lapsed for a short period.

8.8 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. The Board may consider that this delay is in breach of the guidelines.

8.9 Precedent

8.10 The appellant has referred to 'precedents': PL26.245309, PL26.245311, PL21.241352 and PL09.214773.

8.11 PL26.245309 – In this permission to retain a mast in Wexford the Board directed the planning authority to remove conditions requiring the payment of Development Contributions; stating that the Development Contribution Scheme does not provide for payment of repeated contributions in respect of the same mast. The Inspector's report, in recommending the removal, referred to *'the absence of any explicit provision under the Scheme for payment for applications to retain previously permitted structures and having regard to the fact that payment was previously made'*.

- 8.12 PL26.245311 - similarly in this permission to retain a mast in Wexford the Board directed the planning authority to remove conditions requiring the payment of Development Contributions; stating that the Development Contribution Scheme does not provide for payment of repeated contributions in respect of the same mast.
- 8.13 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.
- 8.14 PL09.214773 - in this permission to retain a mast in Kildare the Board directed the planning authority to amend a condition requiring the payment of a Development Contribution, deciding that: (a) the Development Contribution Scheme was correctly interpreted in respect of the condition, 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 temporary permissions for telecommunications support structures, but that (c) the terms of the Scheme were not properly applied by the planning authority, insofar as the reckonable floor area was incorrectly calculated since the Scheme permits the commercial rate to be applied only to the gross floor area of buildings rather than the site area. The original permission did not contain a financial contribution condition.
- 8.15 The Board will note that in the precedents cited by the first party, where condition(s) requiring the payment of contributions were removed, a contribution had previously been paid.

8.16 Development Contribution Scheme

- 8.17 There is no exemption in the current development contribution scheme for masts.
- 8.18 I note that reference to retention in the current development contribution scheme, is 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 previously stated 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.

- 8.19 I note the first party's willingness to pay a development contribution at the rate which applied, it is said, in 2010 - €6,800. The payment of €6,800 might be appropriate if it had been levied in 2010 and the payment remained outstanding; it would in effect be an enforcement issue. There is no provision to apply a development contribution which might have been applicable in 2005, or in 2010 to this permission.
- 8.20 In my opinion the terms of the Development Contribution scheme have been properly applied.
- 8.21 **Wording of Condition**
- 8.22 The wording of Condition no. 5 as cited at paragraph 3.1 above states that payment is to be made prior to the commencement of development. The development is currently in place, therefore this requires amendment.

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 5 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 5, 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 temporary 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 fact that the development is currently in place.

Dolores McCague
Inspectorate

Date