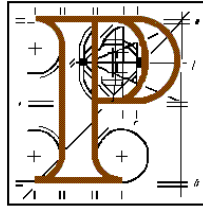


## An Bord Pleanála



### INSPECTOR'S REPORT

**DEVELOPMENT:** Retain 24m high telecommunications mast and all ancillary site development works

**LOCATION:** Lisroe T.D. Duagh, Co Kerry

#### PLANNING APPLICATION

**Planning Authority:** Kerry County Council

**Planning Authority Reg. Ref.:** 15/1143

**Applicant:** Vodafone Ireland Limited

**Type of Application:** Permission

**Planning Authority Decision:** Grant

#### PLANNING APPEAL

**Appellant:** Vodafone Ireland Limited

**Type of Appeal:** First Party Vs Condition No 2

**Observers:** None

**DATE OF SITE INSPECTION:** N/A

**INSPECTOR:** Mary Crowley

## 1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site with a stated area of 0.038 ha is located at Lisroe T.D. Duagh, Co Kerry. The plans and particulars together with site photos that were lodged with the application are available to view on the appeal file. I would also draw the Boards attention to the site photos accompanying the local authority planners report.

## 2.0 PROPOSED DEVELOPMENT

- 2.1 This is an application for planning permission for the retention of existing 24m high multi-user telecommunications support structure carrying associated antennae and link dishes, associated equipment cabin within secure compound and access track. It is stated that the development will continue to form part of Vodafone Ireland Ltds existing GSM / 3G and 4G Broadband telecommunications networks at Lisroe Td, Duagh, Co Kerry. The application was accompanied by a planning report, landowner consent, and associated maps and drawings.

## 3.0 TECHNICAL REPORTS

- 3.1 **Kerry Airport** states that they will not be making any submissions on this application.
- 3.2 The **Local Authority Planner** recommended that planning permission be granted subject to conditions. Their report also stated that the levy calculation for retention application for telecommunication mast was €7,000 towards amenity. Condition No 2 of their report and recommendation refers.

## 4.0 OBJECTIONS / OBSERVATIONS TO THE PLANNING AUTHORITY

- 4.1 None recorded on the file.

## 5.0 PLANNING AUTHORITY DECISION

- 5.1 The planning authority issued notification of decision to **grant** planning permission subject to **5 conditions**. Condition No 2 is relevant to this appeal as follows:

*Within 3 months of receipt of this decision the developer shall pay a contribution of EUR 14,000 to Kerry County Council (Planning Authority) in respect of community infrastructure, environmental amenities and facilities benefitting the development. The amount of this contribution is calculated in accordance with the Councils*

*prevailing Development Contribution Scheme and will be increased from January 1<sup>st</sup> 2017 and annually thereafter (unless previously discharged) in line with the Wholesale Price Index for Capital Goods, Building and Construction as published by the Central Statistics Office unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.*

*Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefitting the development, as provided for in the Councils prevailing Development Contributions Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act and that the level of construction payable should increase at a rate in the manner specified in that Scheme.*

## **6.0 PLANNING HISTORY**

6.1 There was a previous appeal on this site that may be summarised as follows:

**PL08.236160 (Reg Ref 09/1582)** – Kerry County Council refused planning permission for the retention of an existing development (previous planning authority register reference number 04/878) consisting of an existing 24 metre high telecommunication structure, antennas, equipment container and associated equipment within a fenced compound and access track for the following reason:

*The structure is located within 1km of existing residential properties and would therefore contravene section 13.18.11 of the Kerry County Development Plan 2009-2015 which states that telecoms masts shall not be located within 1km of residential properties, schools, hospitals and other structures where there is human occupancy for residential or daily work purposes. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

The decision was appealed by the first party. The Board granted permission for a period of 5 years subject to 6 conditions. Condition No 6 required the payment of a Section 48 Development Contribution with the details to be agreed with the Planning Authority.

6.1 The following planning appeal is referenced in the first party the appeal:

**PL08.242185 (Reg Ref 13/239)** – Kerry County Council decision to **refuse** permission to retain a 25 meter telecommunications monopole

and associated works at Lackroe, Kenmare, Co. Kerry was appealed by the first party to An Bord Pleanála.

The Planning Inspector in their report noted that the Kerry County Council Development Contribution Scheme 2011 provides no exception from the requirement to pay development contributions for telecommunications masts and that this was contrariwise the Circular Letter 07/12 from the DoEC&LG. The Inspector stated that since the Board is considering this application de novo that the Board should anticipate the amendment of the Kerry County Council Development Contribution Scheme and therefore not apply a contribution condition in accordance with the Circular Letter.

The Board agreed with this approach and granted permission subject to 3 conditions none of which required the payment of a development contribution.

## 7.0 POLICY CONTEXT

- 7.1 The operative plan for the area is the **Kerry County Development Plan 2015 – 2021**. Kerry County Council **Development Contributions Scheme 2011** was adopted on the 21<sup>st</sup> of March 2011.
- 7.3 The **Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities** (1996) generally advocates improvements in the country's telecommunications infrastructure, subject to a range of considerations and limitations. **Circular Letter: PL 07/12** issued in October 2012 by the Minister for the Environment, Community and Local Government under section 28 of the Planning and Development Acts 2000-2012 to update certain sections of the Telecommunications Antennae and Support Structures Guidelines (1996) states inter alia *that all future Development Contribution Schemes must include waivers for broadband infrastructure provision and these waivers are intended to be applied consistently across all local authority areas.*
- 7.4 It is also noted that the **Development Contributions Guidelines for Planning Authorities** (2013) require planning authorities in reviewing their development contributions schemes to include *wavers for broadband infrastructure (masts and antennae)*. The Guidelines further state that the *practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. 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.*

## **8.0 GROUNDS OF APPEAL**

- 8.1 The first party **appeal against Condition No 2 only** (development contribution of €14,000) has been prepared and submitted by 4Site on behalf of the applicant Vodafone who request that it be removed as it has not been properly applied. The appeal may be summarised as follows:
- 8.2 The appellant raises concern that the permission of 2009 PL08.236160 (Reg Ref 09/1582 refers), the parent permission has been completely complied with and all contribution and bond (as referred to in the previous Board's decision) have been paid in full. It is considered that the current appeal is an attempt at double charging for the existing established site.
- 8.3 Letter dated 15<sup>th</sup> June 2011 from Kerry County Council submitted with the appeal acknowledging that development contributions have been paid in full as requested in the previous decision in 2009.
- 8.4 There is no explanation following condition No 2 of the current decision as to why the Ministerial Guidelines regarding contribution has not been implemented i.e. double charging.
- 8.5 Despite having reviewed their County Development Plan 2015 – 2021, Kerry County Council have not yet reviewed their current Development Contribution Scheme in light of the January 2013 Guidelines and in using their 2011 Scheme are attempting to apply an outdated Development Contribution Scheme to an Existing Structure.
- 8.6 Concluded that it is not acceptable for Kerry County Council to suggest the continued use of their outdated 2011 contribution scheme while awaiting the introduction of a scheme in line with the current 2013 Ministerial Guidelines. Submitted that An Bord Pleanála have previously ruled against the imposition of development conditions in PL08.242185 where the Board had to anticipate the amendment of the 2011 Kerry County Council Development Contributions Scheme and not apply any development contributions.

## **10.0 RESPONSE OF THE PLANNING AUTHORITY (S.132)**

- 10.1 Kerry County Council *confirm, as per the General Development Contribution Scheme adopted by Kerry County Council at the time of the making of the decision, the applicable levy for retention of a telecommunications mast was and currently is €14,000 for Amenity.*

## 11.0 OBSERVATIONS

11.1 None received

## 12.0 ASSESSMENT

12.1 Further to my examination of the planning file and the grounds of appeal I note that the first party appeal is confined to the development levy set out in Condition No 2 (Section 48 Development Contribution) of the notification of decision of the planning authority to grant permission. Section 48 (13) of the Planning and Development Act 2000 states that an appeal that *relates solely to a condition dealing with a special contribution and no appeal is brought by any other person under Section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance but shall determine only the matters under the appeal*. I consider that it is therefore appropriate that this appeal should be confined to the consideration of whether or not the terms of the Kerry County Council Section 48 Development Contribution were properly applied in this instance.

12.2 For clarity and completeness I have had due regard to the provisions of the Habitats Directive and conclude that having regard to the source-pathway-receptor model along with the nature of the proposed development (a continued use) I would not consider that an NIS or Appropriate Assessment is necessary in this case.

12.3 The Kerry County Council Development Contribution Scheme 2011 provides no exception from the requirement to pay development contributions towards amenity for the retention of telecommunications masts. Contrariwise the Circular Letter 07/12 from the DoEC&LG which is explicitly issued under Section 28 of the Planning and Development Act 2000 as amended requires that planning authorities when revising their development contribution schemes should provide a waiver for broadband infrastructure (masts and antennae) from the requirement to pay development contributions. Further the Development Contributions Guidelines for Planning Authorities (2013) require that planning authorities in reviewing their development contributions schemes should include *waivers for broadband infrastructure (masts and antennae)* and that the *practice of "double charging" is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing "planning gain" in an equitable manner*. The Guidelines remind Authorities *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*.

12.4 The Board granted permission for the development now the subject of this retention application in 2010 (PL08.236160 (Reg Ref 09/152) refers) for a period of 5 years subject to 6 conditions. Condition No 6 required the payment of a Section 48 Development Contribution with the details to be agreed with the Planning Authority. According to the appeal a substantial contribution of €14,000 was requested and paid. The stated amount paid is in line with the Kerry County Council Development Contributions Scheme 2011 which was adopted on the 21<sup>st</sup> of March 2011 and is still in effect today. In a letter dated 15<sup>th</sup> June 2011 from the Planning Authority it is stated that *with regard to the Condition No 5 is noted that the development contributions have been paid in full.*

12.5 Having regard to the foregoing it is evident that the Kerry County Council Development Contributions Scheme 2011 has not been amended or updated to reflect either Circular Letter 07/12 or the section 28 Ministerial Development Contributions Guidelines for Planning Authorities issued in 2013. To apply the operational 2011 Development Contributions Scheme without due regard to the statutory guidelines is wholly inappropriate. However it is reasonable the amendment of the Kerry County Council Development Contribution Scheme is anticipated and therefore the Board should not apply a contribution condition in accordance with both the Circular Letter and the Section 28 Guidelines. I therefore recommend that the planning authority be directed to remove said condition and the reason therefore.

### **13.0 CONCLUSION & RECOMMENDATION**

13.1 Having regard to the nature of the condition the subject of the appeal and based on the reasons and considerations set out below, I am satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and recommend that the Board directs the Council under subsection (13) (a) of Section 48 of the Planning and Development Act, 2000 to **OMIT Condition No 2.**

### **14.0 REASONS AND CONSIDERATIONS**

14.1 Having regard to the:

- Kerry County Council Development Contribution Scheme 2011
- Circular Letter 07/12 issued from the Department of the Environment, Community and Local Government is explicitly issued under Section 28 of the Planning and Development Act 2000 (as amended) which requires that planning authorities when revising their development contribution schemes

should provide a waiver for broadband infrastructure (masts and antennae) from the requirement to pay development contributions and

- The Development Contributions Guidelines for Planning Authorities (2013) which require planning authorities in reviewing their development contributions schemes to include *waivers for broadband infrastructure (masts and antennae)* and that *practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner.*

It is considered that it would be inappropriate to attach a Section 48 Development Contribution in this instance as:

- (1) A Section 48 Development Contribution in the amount of €14,000 has been paid for this development under the previous Board decision for this site (PL08.236160 (Reg Ref 09/152) refers) and in line with the Kerry County Council Development Contribution Scheme 2011 and to apply a Development Contribution condition would amount to “double charging” and the
- (2) Section 28 Ministerial Development Contributions Guidelines for Planning Authorities issued in 2013 that require planning authorities in reviewing their development contributions schemes to include *waivers for broadband infrastructure (masts and antennae)* and that the *practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner.*

---

**Mary Crowley**  
**Senior Planning Inspector**  
**20<sup>th</sup> June 2016**