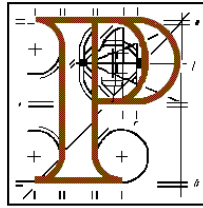


An Bord Pleanála



Inspector's Report

PL18.246407

DEVELOPMENT:-

Retention of a 24m high monopole telecommunication structure carrying 6 radio antennae and 2 no. RT link dishes together with associated equipment at Tullyvaragh Lower, Castleblayney, County Monaghan.

PLANNING APPLICATION

Planning Authority: Monaghan County Council
Planning Authority Reg. No: 15/236
Applicant: Highpoint Communications Limited
Application Type: Retention of Existing Permission
Planning Authority Decision: Grant

APPEAL

Appellant: Highpoint Communications Limited
Types of Appeal: 1st Party -v- Financial Contribution Condition
Observers: None
Date of Site Inspection: Not Inspected

INSPECTOR: Paul Caprani

1.0 INTRODUCTION

PL18.246407 relates to a first party appeal under the provisions of Section 48(2)(b) against a financial contribution condition levied by Monaghan County Council in respect of the retention of a 24 metre high monopole telecommunication structure carrying 6 radio antennae and 2 RT link dishes together with associated equipment near Castleblayney in County Monaghan. The grounds of appeal argue that the financial contribution of €41,020 was incorrectly applied in this instance.

2.0 SITE LOCATION AND DESCRIPTION

The appeal site is located on the eastern side of the N2 National Primary Route approximately 4 kilometres north of the town of Castleblayney in County Monaghan. As the current appeal relates to a financial contribution under the provisions of Section 48(10)(2), a site inspection was not carried out in this instance.

3.0 PROPOSED DEVELOPMENT

Retention of planning permission is sought for a 24 metre high monopole together with 6 existing antennae dishes and 2 RT link dishes on the monopole structure.

4.0 PLANNING AUTHORITY'S ASSESSMENT

4.1 Documentation Submitted

The planning application was lodged on 3rd July, 2015. A covering letter submitted with the application sets out the technical justification for the proposed development, the potential visual impact and details as to how the proposed development complies with guidance in relation to telecommunication infrastructure. The covering letter also notes that under the original grant of planning permission, Condition No. 1 requested a financial contribution of €40,000. Following correspondence with Monaghan County Council it was outlined that only 3 of the 6 antennae granted under the planning permission are currently being used. Monaghan County Council confirmed that the only option to amend Condition No. 1 would be through a new planning application

that amends the number of antennae in operation. The current application is made in response of this condition.

A report from the Environment Department and the Environmental Health Officer states that there is no objection to the proposed development.

4.2 Additional Information Request

Details of the initial planner's report in respect of the proposed development are not contained on file. Notwithstanding this it is clear from the file that the Planning Authority requested the following additional information.

1. The applicant seeks to retain the existing mast, 6 panel antennae and 2 radio link dishes. However the documentation submitted with the application suggests that only 3 of the antennae are in use despite both Vodafone and Meteor stating that they operate from the site and the plans indicate that 6 antennae are in use by both operators. The applicant is requested to submit clarification on this matter.
2. The Planning Authority notes that Condition No. 1 of planning permission Ref. 13/297 stipulates that development contributions to the sum of €40,000 are outstanding which renders the development on site to be currently non-compliant. As permission Ref. 13/297 is still extant and the development proposed under the current application does not clarify that it is a substitution for the development granted under permission 13/297, the Planning Authority has no option but to continue with enforcement action to ensure compliance with permission 13/297, until it is clarified this application seeks to supersede permission 13/297 and the developer is abandoning permission 13/297 in favour of any permission issued under this application. Therefore in order to clarify the matter you are required to:
 - (a) Confirm with a legally binding declaration that the development proposed under the current application is in substitution for the development granted under planning permission Ref. 13/297 and the developer is abandoning permission 13/297 in favour of any permission issued under this application.

(b) Publish and submit revised site notices and newspaper notices describing the development as “retention of permission for existing development of 24 metre monopole telecommunication structures carrying 3 panel antennae with 2 radio link dishes along with associated telecommunication container at ground floor level all enclosed in a palisade fence and access track with future requirements for 3 antennae and 2 dishes”. The development is in substitution for the development permitted under planning Ref. 13/297.

4.3 Additional Information Response

Further information was submitted on 19th February, 2016. In respect of Issue No. 1 it is confirmed that Vodafone and Meteor operate from this site and the applicant seeks to retain 6 panel antennae and 2 radio link dishes that are in operation.

In respect of the second issue, it is confirmed that the development proposed under the current application is in substitution for the development granted under planning permission Ref. 13/297 and a letter of declaration to this effect is attached.

4.4 Further Assessment by the Planning Authority

A further planner’s report dated 8th March, 2016 notes in respect of development contributions, that contributions were attached to the previous permission under 13/297 and have not been paid thus far. The comments made in the supporting statement submitted with the planning application notes that the contributions pursuant to Reg. Ref. 13/297 were not paid as only 3 antennae on the mast were in use and the current application is seeking to amend Condition No. 1 of Reg. Ref. 13/297. However it is noted that the permission now being sought is to retain 6 antennae with 2 RT link dishes. On this basis and on comparison with details as approved under 13/297 it is noted that the number of antennae/dishes remain as that previously approved under Reg. Ref. 13/297. Accordingly development contributions attached remain outstanding.

Condition 2(a) of the grant of planning permission requires the developer to pay to Monaghan County Council the sum of €41,020 in accordance with the general contribution scheme. (The Board will note that the original calculations as per the financial contribution calculation sheet attached to the planner’s report requires a contribution of €51,280.

This calculation appears to be based on 8 antennae and appears to have been made in error. The actual contribution attached to the Planning Authority's notification to grant planning permission is €41,020).

5.0 PLANNING HISTORY

Details of one application is attached to the grounds of appeal to the rear of the file. Under Reg. Ref. 13/297, Monaghan County Council on the 23rd December, 2013 granted retention of planning permission for the existing 24 metre monopole carrying 3 panel antennae and 2 radio link dishes together with future requirements for 3 antennae and 2 link dishes on the subject site.

It appears from the planner's report that Monaghan County Council under the parent permission Reg. Ref. 06/919 issued notification to refuse planning permission for a monopole with 3 panel antennae on the grounds that it was injurious to the visual amenities of the area and may interfere or injure a historic monument in the vicinity. The decision was subject to a first party appeal and An Bord Pleanála subsequently granted permission on the 14th August, 2013 for a period of 5 years. The Board will note that details of this appeal application are not attached.

Under Reg. Ref. 12/232 a retention of planning permission was sought for the development however this application was deemed to be withdrawn.

6.0 GROUNDS OF APPEAL

The grounds of appeal specifically relate to Condition No. 2 which requires the developer to pay Monaghan County Council a sum of €41,020. The grounds of appeal outline the site history. It notes that there was no development contribution levied in respect of the parent permission (Reg. Ref. 06/919).

In respect of the subsequent application Reg. Ref. 13/297 the applicant wished to avoid a situation whereby a planning condition attached to the retention of permission would override the use of Class 31 exemptions on the existing antennae support structure. Therefore this application made provision for 3 panel antennae and 2 dishes. Monaghan County Council imposed a development contribution of €40,000.

It is stated that the current application is sought as a substitution of planning Ref. 13/297. In granting planning permission Monaghan County Council required a development contribution of €41,020. The applicant understands and accepts the requirement to pay a financial contribution in accordance with the Development Contribution Scheme.

It is considered that payment of €5,130 per antennae would be applicable in the instance where the attachment of antennae or dishes to an existing mast was prevented by (a) the conditions of the exempted development provisions (Class 31) or (b) there was a condition attached to a parent permission which prevented the use of these exemptions. In both these instances an independent application for planning permission would be required for antennae and dishes only. It is suggested that levying existing antennae and the mast is essentially “double charging” as the mast serves no purpose without the antennae.

It is considered that Class 3 (N) of the development contribution scheme is “either/or” situation within the Class. This provision has been made to ensure that applications for antennae and dishes alone can be levied as a financial contribution.

It is suggested that this precedent has been established in deciding Appeal Ref. PL18.242962 (see attached file PL18.246407) where both the Inspector and the Board argued that levying the existing mast and antennae is essentially double charging. It is respectively submitted therefore that a contribution of €10,240 is payable in respect of the retention of the existing mast and all associated equipment.

7.0 APPEAL RESPONSES

Monaghan County Council submitted the following response to the grounds of appeal. It is stated that the Local Authority’s Development Contribution Scheme as adopted by Monaghan County Council clearly states that all planning permissions are subject to specified development contribution charges where appropriate. The Monaghan County Council Development Contribution Scheme includes development contribution charges in respect of community, recreation and amenity facilities with a category specific to telecommunications (Category 3(N)). The applicant has sought to set aside the previous permission obtained under Ref. 13/297 in lieu of the subject application in order to reduce development contribution liabilities. It is noted that no

development contribution was levied on the parent permission. The current application seeks to the continuation of permission for the monopole and the carrying of 3 panel antennae together with the retention of an additional 3 panel antennae. Monaghan County Council deemed it appropriate to levy a development contribution of €10,240 for the original development and also levy a further €30,780 in respect of additional panel antennae which the applicant seeks to retain also.

7.1 Further Submission on Behalf of the Applicant.

It is accepted that the merits of the scheme cannot be subject to an appeal. It is also accepted that a financial contribution condition is merited in this instance. However it is respectfully submitted that the amount to be levied in this instance should be €10,240 for the mast and all associated equipment. It is reiterated that the scheme is being incorrectly applied in this instance.

8.0 DEVELOPMENT CONTRIBUTION SCHEME

Section 19 of the Plan sets out exemptions/reductions. It states that 100% exemption for all development contribution charges in relation to telecommunications development which is solely for the provision of broadband infrastructure where the new development does not place a demand for new, upgraded or additional infrastructure or services.

The amounts of contributions to be levied has been revised on a number of occasions since the original adoption of the scheme in 2014. The most up-to-date levies are set out below.

In respect of Category 3(N) – Telecommunications; a levy of €10,240 will be levied per mast and a levy of €5,130 per antennae installed on the existing mast.

9.0 PLANNING ASSESSMENT

The Development Contributions, Guidelines for Planning Authorities published in January, 2013 require Planning Authorities to include, inter alia, the following in their contribution schemes.

- *Waivers for broadband infrastructure (masts and antennae).*

It appears that Monaghan County Council, in adopting its development contribution scheme, permits 100% exemption from all development contribution charges in relation to telecommunication development which is solely for the provision of broadband infrastructure. It appears that Monaghan County Council have determined that the current application does not fall under the current exemption and I note that the applicant in this instance has not argued an exemption under this provision. The Board will also be aware that it is required to implement and adhere to the adopted Development Contribution Scheme notwithstanding the fact that a Scheme which has been adopted by a Planning Authority may not fully adhere to requirements set out in any Section 28 Guidelines.

In this instance the adopted Development Contribution Scheme is clear and unambiguous in that developments relating to masts and antennae attract levies in accordance with the Scheme adopted. An appeal may only be brought to the Board where the applicant considers that the terms of the Scheme have not been properly applied in respect of any condition laid down by the Planning Authority.

In determining the current application the Board should have particular regard to the planning history as it relates to the subject development. Planning permission was granted by the Board on appeal for a 24 metre high antennae support structure together with 3 panel antennae and 2 link dishes. The permission was limited to a period of 5 years with no development contribution attached. In 2013 the applicant sought retention of planning permission for this subject development. The grant of planning permission required a development contribution of €40,000 on the basis that the development attracted levies in respect of the following:

- €10,000 per mast.
- €15,000 for three antennae existing on the mast.
- €15,000 for three future antennae on the mast.

The Planning Authority notes that the development contribution in respect of this application has not been paid to date.

The current application before the Board clearly indicated that the applicant seeks to retain 6 panel antennae and 2 radio link dishes which are in operation on site. While the current application may be made in substitution for the extant permission under Ref. 13/297, it does not in my view obviate the need for the applicant to pay development contributions in accordance with the Development Contribution Scheme adopted. The argument put forward that the financial contribution constitutes double

charging on the grounds that the mast has no function other than supporting antennae, and therefore should not attract a financial contribution, is not supported by the explicit statement set out under Category 3(N) of the adopted Development Contribution Scheme. Category 3(N) of the Development Contribution Scheme clearly sets out a requirement for separate levies relating to the masts and relating to the antennae.

It is clear that the applicant is required to pay financial contributions under the extant permission Ref. 13/297. The applicant has not paid these financial contributions to date. It is also clear that the application for retention in this instance relates to a supporting monopole structure together with 6 antennae all of which attract levies under the adopted Development Contribution Scheme. It is inappropriate in my view that the applicant should seek a reduction in the development contribution required under the previous application (Ref. 13/297) by submitting a new application for essentially the same development in substitution of the extant permission granted, and seek a reduced financial contribution where no contribution has been paid in the first instance. I therefore recommend that the financial contribution levied under Condition No. 2 of the grant of planning permission is fair and reasonable and should be retained unaltered in any decision issued by the Board.

Appropriate Assessment

Having regard to the nature and scale of the proposed development which is in situ and the nature of the receiving environment and the proximity to the nearest European site which is located in excess of 10 kilometres away, it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans and projects on a European site.

**Paul Caprani,
Senior Planning Inspector.**

28st June, 2016.

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