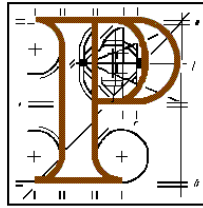


An Bord Pleanála



Inspector's Report

PL18.246408

DEVELOPMENT:-

Retention of existing 24m high monopole telecommunications structure carrying 6 no. radio antenna and 3 RT Link Dishes together with associated equipment and access track at Seeola, Inniskeen, County Monaghan.

PLANNING APPLICATION

Planning Authority: Monaghan County Council
Planning Authority Reg. No: 15/235
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

PL18.246408 relates to a first party appeal against under the provisions of Section 48(10)(b) of the Planning and Development Act 2000, (as amended). It argues that the financial contribution condition attached to Monaghan County Council's grant of planning permission in respect of the retention of a 24 metre high monopole has not been properly applied in accordance with the adopted financial contribution scheme. The monopole is located approximately 1 kilometre north of the village of Inniskeen near the Monaghan/Louth border. In its decision to grant planning permission Condition No. 2 required the developer to pay Monaghan County Council a sum of €25,630.

2.0 SITE LOCATION AND DESCRIPTION

The existing 24 metre monopole is located in the townland of Seeola approximately 1 kilometre north-west of the village of Inniskeen in south-east Monaghan. As the current appeal relates to a first party appeal against a financial contribution condition, a site inspection was not carried out in this instance.

3.0 PROPOSED DEVELOPMENT

Planning permission is sought for the retention of a 24 metre high monopole telecommunications structure and associated equipment including 6 antennas (3 Vodafone and 3 Meteor) and 2 no. 300mm and 1 no. 600 mm dish together with an equipment container and compound fence. According to the drawings submitted, all equipment is presently operating on site it is not proposed to install any additional equipment as part of the current application.

4.0 PLANNING AUTHORITY'S DECISION

4.1 Initial Assessment

The planning application was lodged with Monaghan County Council on 3rd July, 2015. A covering letter submitted with the application notes that the current permission does not expire on site until May, 2019. However the applicants are now seeking a long-term permission in keeping with the new Telecommunications Guidelines. The supporting letter goes on

to outline various policies and guidelines as they relate to telecommunications infrastructure and also sets out the technical justification and the visual impact arising from the proposed development. In respect of development contributions the letter submitted with the application notes that under the original grant of permission Monaghan County Council requested a financial contribution of €54,770. This amount was amended by An Bord Pleanála and reduced to €39,830. Following correspondence with Monaghan County Council it was outlined that only 6 of the 9 antennae granted under the permission is currently being used. Monaghan County Council confirmed that the only option to amend the Condition No. 1 would be through a new planning application that amends the number of dishes/antenna in operation. This application is a response to that decision. It should be noted that the 2013 Department of Environment Guidelines advises on the application of waivers in respect of broadband infrastructure.

Reports from the Environmental Health Officer and the Environment Department raised no objection to the proposed development. The initial planner's report notes the information contained in the covering letter submitted with the application and notes that the development contribution in respect of the original application was not paid. Accordingly development contributions attached under the original grant of planning permission remain outstanding.

4.2 Additional Information Request

Monaghan County Council therefore sought the following additional information.

The Planning Authority notes that Condition No. 1 of planning permission Ref. 13/254 (as amended by An Bord Pleanála decision Ref. PL18.242962) stipulates that development contributions to the sum of €39,830 are outstanding which renders the development on site to be currently non-compliant. As permission Ref. 13/254 is still extant and the development proposed under the current application does not clarify that it is in substitution for development granted under permission 13/254, the Planning Authority has no option but to continue with enforcement action to ensure compliance with permission 13/254, until it is clarified this application seeks to supersede permission 13/254 and the developer abandoning permission 13/254 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 development granted under planning permission Ref. 13/254 and the developer is abandoning permission 13/254 in favour of any permission issued under this application.

- (b) Publish and submit revised notice and newspaper notice describing the development as “retention of permission for an existing 24 metre high monopole telecommunication structure carrying 6 radio antennae and 3 RT link dishes together with associated equipment and access track. This development is in substitution for the development permitted under planning permission Ref. 13/254.

The additional information request was dated 27th August, 2016.

4.3 Additional Information Response

A response was received from the applicant on 12th February, 2016. It confirms that the development proposed under the current application is in substitution for the development granted under planning permission Ref. 13/254.

A letter from a solicitor is attached confirming that the current application is in substitution for the permission granted under planning Ref. 13/254. It further states that if planning Ref. No. 15/235 is granted (current application) then planning permission under permission 13/254 will be abandoned.

A revised site notice and newspaper notice was also submitted.

A further planner’s report notes in respect of development contributions that *“it is considered that it is appropriate in this case, having regard to the previous planning permission and appeal, that development contributions are applicable to the development seeking retention of permission based on the rationale set out by An Bord Pleanála under appeal Ref. PL18.242962”*.

The rationale for development contributions is set out in a separate sheet and is based on a rate of €10,240 per mast together with €5,130 per antennae installed on the mast. In this instance 3 antennae are

installed therefore the total amount sought as a development contribution amounts to €25,630.

Condition No. 2(a) required the developer to pay Monaghan County Council a sum of €25,630.

5.0 PLANNING HISTORY

One history file is attached. This appeal related to a first party appeal against a financial contribution condition on the subject site. Monaghan County Council granted planning permission for a 24 metre mast and all associated cabinets. Condition No. 1 of the grant of planning permission required a financial contribution of €54,770.

The Board amended the financial contribution to €39,830 on the basis that the then financial contribution scheme required a financial contribution of €9,950 for the monopole and €4,980 per antennae. A total of 6 panel antennae were proposed in this instance which amounted to €29,880. In total therefore the Board levied a financial contribution for a monopole structure and 6 antennae of €39,830.

6.0 GROUNDS OF APPEAL

A first party appeal was made under the provisions of Section 48(10)(b) of the Act.

The grounds of appeal set out the site history relating to the site and its notes that the subject development was initially granted planning permission in June, 2008 (Reg. Ref. 08/293). The Board will note that details of this planning application are contained in a pouch to the rear of the history file – Reg. Ref. PL18.242962. A temporary permission was granted for a period of 5 years.

In 2013 the applicant sought a retention of permission for the subject development (Reg. Ref. 13/254 – PL18.242962).

In obtaining the grant of planning permission under the latter application the applicant included the provision for 6 antennae. However these antennae were indicative and the applicant had no commitment from any operators that they were going to install equipment at this location. The grounds of appeal suggest that the inclusion of this future

equipment in the absence of any firm offers from operators to install such antennae was perhaps misguided as it neglected to consider the implications with regard to the levying of development contributions. The purpose of including additional antennae was to avoid a situation where a condition was attached to the structure which would limit the use of planning exemptions in the future. In the absence of operators who wish to make use of the provision for these additional antennae on the existing masts the applicant has no justification for implementing the permission. The current monopole currently accommodates Meteor and Vodafone operators which are providing mobile broadband services for this site. Monaghan County Council sought to achieve payment for this contribution of €39,830. The applicant has therefore sought to remedy this situation by applying for retention of permission for the structure as built in place of planning Ref. 13/254. The applicant does not dispute that a contribution is payable as An Bord Pleanála precedent indicates that a contribution is payable on such a development where one has not been previously levied.

It is argued that it is considered that the payment should amount in this instance to the telecommunication mast only i.e. €10,240. It is considered that the payment of €5,130 per antennae is not applicable in this instance. It is argued that levying existing antennae and the mast is essentially “double charging” as the mast serves no purpose without the antennae. Presumably the local authority would not grant permission for the mast on its own as there will be no technical justification for it in the absence of any antennae or dishes. It is considered that Class N of the development contribution scheme is “either/or situation within the class”.

Reference is made to the inspector’s report in respect of PL18.242962 which suggests that levying a financial contribution in respect of the mast and the antennae represents double charging. It is therefore considered that the terms of the development contribution scheme has been incorrectly applied and a financial contribution of €10,240 applies in this instance.

7.0 APPEAL RESPONSES

Monaghan County Council submitted the following response to the grounds of appeal. The Monaghan County Council Development Contribution Scheme 2013-2019 includes development contribution charges in respect of community, recreation and amenity facilities.

It is stated that under 08/293 planning permission was granted for a period of 5 years for a 24 metre monopole structure carrying 9 panel antennae and 6 transmission link dishes. No development contribution was levied on this permission. It should be noted however that only 3 of the panel antennae and 1 radio dish were installed on the mast under the lifetime of the permission 08/293. Therefore the remainder of the antennae and dishes currently attached to the mast have not been erected under a valid planning permission as Reg. Ref. 13/254 is being set aside by the appellant. Therefore the current application seeks a continuation of a permission for the 24 metre monopole structure carrying 3 panel antennae and 1 transmission link dish with all associated equipment. Consequently Monaghan County Council deemed it appropriate to levy a development contribution of €10,240 for the original development (24 metre monopole structure carrying 3 panel antennae and 1 transmission link dish with associated equipment container permitted under Reg. Ref. 08/293) and also to levy a further €15,390 in respect of the additional panel antennae which the applicant seeks to retain also.

7.2 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 MONAGHAN COUNTY COUNCIL'S GENERAL DEVELOPMENT CONTRIBUTION SCHEME 2013-2019

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 the Scheme may not fully adhere to requirements set out in the 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.

The grounds of appeal argue in this instance that a contribution of €10,240 is payable for the proposed mast as the retention of the existing mast includes all the antennae and dishes. It is suggested that levying the existing antennae and the mast separately is essentially double charging as the mast serves no purpose without the antennae. Reference is also made to the previous inspector's report and the Board's decision, which it is contended, supports this view.

It is clear from the planning history that under the original parent permission Reg. Ref. 08/293 planning permission was granted for a 24

metre high monopole structure carrying 9 panel antennae and 6 transmission link dishes. Permission was granted subject to 8 conditions none of which required a financial contribution. A subsequent application sought an extension of this permission where the monopole support structure which carries 3 panel antennae and 1 RT link dish with associated cabinets and containers and permission for 6 panel antennae and 4 RT link dishes. Again Monaghan County Council granted planning permission for this development but imposed financial contribution of €54,770. This was based on:

- The levy attracted under the then financial contribution scheme which included €9,950 per mast.
- 3 existing antennae with a radio link dish which amounted to €14,940.
- And 6 proposed panel antennae (€4,980 per antenna) with 4 dishes which amounted to €29,880.
- The total contribution therefore amounted to €54,770.

The Board on foot of a first party appeal reduced this amount to €9,950 per mast and €29,880 per panel antennae (x 6).

The current application before the Board seeks the retention of the 24 metre high monopole telecommunications structure carrying 6 radio antennae and 3 RT link dishes. In calculating the financial contribution levied, Monaghan Co Council levied a financial contribution in respect of the monopole and only 3 of the antennae in question.

A key consideration in determining the application under the provisions of Section 48 in my opinion relates to the fact that to date, no financial contribution has been paid by the applicant in respect of the monopole or the antennae in question. It is clear that the original grant of planning permission attracted no financial contribution in respect of the development. In the case of PL18.242962 the Board levied a contribution in respect of the mast and 6 of the 9 antennae. As 3 of the antennae already existed on the structure the Board discounted these antennae for the purposes of calculating the financial contribution and the contribution was levied in respect of 6 of the antennae only. Again I reiterate that no financial contribution has been paid to date on foot of the Board's decision. It is clear from the information contained on file

that the current application, according to the applicant's response to the additional information request is in substitution for the development granted under planning permission Ref. 13/254 (PL18.242962).

As the current application is a substitution for the development granted under planning permission Ref. 13/254, and the fact that no development contribution has been paid in respect of the development to date, I consider that the Development Contribution Scheme as set out in the most recent revision should be applied to the proposed development in its entirety. The development currently before the Board relates to 1 mast and 6 antennae. If the provisions of Category 3(N) as set out in the most recently updated Development Contribution Scheme the development in question would attract a total financial contribution of €30,780 for the 6 antennae and an additional €10,240 for the mast.

The total overall contribution would therefore amount to €41,020.

While the applicant argues that the financial contribution in question constitutes essentially double charging, as the mast structure serves no purpose without the antennae, the Development Contribution Scheme as adopted is clear and unambiguous in that the mast and the antennae attract separate charges. The Board is required under the provisions of the legislation to apply the scheme as adopted by the Planning Authority. The Board have no legal jurisdiction to interpret or evaluate the merits of any financial contribution scheme as adopted by the Planning Authority. The levies set out for telecommunications under Category 3(N) are clear and unambiguous in my view in that separate levies are required for the mast and the antennae.

10.0 CONCLUSIONS AND RECOMMENDATIONS

Arising from my assessment above and having particular regard to the fact that the current application constitutes a new application, which according to the applicant, substitutes the previous grant of planning permission under PL18.242962 and more importantly, that to date, the applicant has not paid any financial contributions in respect of the development I consider that the development comprising of a single mast and 6 antennae should attract a financial contribution in accordance with the adopted Development Contribution Scheme of €41,020 (€10,240 for the mast and €5,130 per antenna). I therefore recommend that Condition No. 2 be amended accordingly.

11.0 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.**

21st June, 2016.

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