



An
Bord
Pleanála

Inspector's Report

PL 07 246739

DEVELOPMENT:

Retention of 30 m high communications support structure, antennas link dishes and equipment containers permitted under P. A. Reg. Ref. 10/739 at Derradda, Oughterard, Co. Galway.

PLANNING APPLICATION.

Planning Authority

Galway County Council

Register Reference:

P. A. Reg. Ref. 16/146

Applicant:

Three Ireland Services (Hutchinson) Ltd.

Type of Application:

Permission

Planning Authority Decision:

Grant Permission

APPEAL.

Appellant:

Three Ireland Services (Hutchinson) Ltd.

Type of Appeal:

S48 Appeal – Development Contribution

Inspector:

Jane Dennehy.

1.0 **Site Location and Description of Proposed Development.**

- 1.1 The communications equipment and thirty metres high support structure subject of the application is located on a site accessed by a private track and enclosed by palisade fencing on elevated lands in woodlands approximately five kilometres to the south west of Oughterard, Co.Galway.

2. **Planning History**

- 2.1 **P A. Reg. Ref. 10/739:** Permission was previously granted for the retention of the development on 12th July, 2010.

Under Condition No 3, the duration of the grant of permission was limited to a five year period. The reason provided was to allow for planning review having regard to changes in technology and design. The grant of permission expired on 11th July, 2015.

Under Condition No 11 there is a requirement for payment of a development contribution in the amount of €10,000 in accordance with the terms of the Galway County Development Contribution Scheme, prior to commencement of the S48 development unless a phased payment schedule has been agreed with the planning authority.

Condition No 12 is a bond condition for the amount of €8,000 which according to the Condition was calculated with reference to the S48 Development Contribution Scheme.

P. A. Reg. Ref. 02/4762: Permission was granted for the retention of the development originally permitted in 1997 for a five year period according to the planning officer's report on the application under P A. Reg. Ref. 10/739:

P. A. Reg. Ref. 97/1521: Permission was originally granted on 8th September, 1997 for the support structure and equipment subject to a limited period of five years by condition of five years, according to the planning officer's report on the application under P A. Reg. Ref. 10/739.

3.0 **The Current Proposal.**

- 3.1 The application lodged with the planning authority on 29th March, 2016 indicates proposals for the retention of the development to facilitate continuation of the authorised use which is described as established and integral to the coverage within the network. No changes to the installation were proposed and permission was sought for an indefinite period.

4 **Planning Authority Decision.**

- 4.1 By order dated, 20th May, 2016 the planning authority decided to grant permission subject to eight conditions. Condition No 8 is reproduced in full below:

“Within three months of the grant of this permission, the developer shall pay €10,000.00 to the Planning Authority. This charge has been calculated using the Development Contributions scheme adopted by Galway County Council in accordance with the provisions of Section 48 of the Planning and Development Act 2000. The makeup of this sum is detailed in the list below”, unless a phased payment schedule has been agreed in writing with the Planning Authority.

Reason: *So that the developer shall pay an equitable portion of the cost of the facilities that are provided or that it is intended will be provided by or on behalf of Galway County Council which will facilitate the proposed development.”*

4.2 According to the planning officer’s report, the payment of the development contribution required under Condition No 11 of the prior grant of permission under P. A. Reg. Ref. 10/739 is outstanding.

5. The Appeal

5.1 An appeal, under section 48 (10 (b) of the Planning and Development Acts 2000-2015 against Condition No 9 was received from the applicant on 15th June, 2016. It is claimed that the condition terms of the Galway County Council Development Contributions Scheme 2016 were not properly applied in attaching Condition No 8. According to the appeal:

- The Scheme provides for contribution conditions to be applied in two specific circumstances: €20,000 for the first grant of permission and an additional €10,000 for each co-location. There is no contribution requirement for retention of existing communications masts and the charges do not apply to the current application.
- The current application is the fourth application for the site location and no contribution was required under the first application under P. A. Reg. Ref. 97/1521. (See *planning history under para 2.1-2.3 above.*) No explanation has been provided for the application of the €10,000 contribution requirement for the current proposal. It is not stated whether it is for co-location or for general retention.
- The Contributions scheme does not provide for the application of a development contribution condition due to non-payment of contribution required under the original grant of permission. No contributions were required under the first and second grants of permission and a €10,000 was required under the third grant of permission. (P. A. Reg. Ref. 10/739 refers.) A contribution could be required for the first grant of permission for a mast under the 2010 Development Contributions Scheme. The condition should not have been attached to that grant of permission because the application

was not the first application. There are no provisions in the current 2016 contributions scheme for retrospective charging.

- The condition is contrary to sections 48 (2) (a), (b) and (c) of the Acts as no basis is provided in the 2016 scheme for contributions for retention applications for communications structures; the 2016 scheme provides for a contribution in respect of the first application only and the contribution does not come within specific exceptional costs as provided for under Section 48. (2) (c) of the Acts.

6. **Planning Authority Response**

- 6.1 There is no submission from the planning authority on file.

7. **Assessment.**

- 7.1 The matters to be considered are as to whether the requirement for payment of a contribution in the amount of €10,000 to the planning authority under Condition No 8 comes within the scope of the adopted Development Contributions Scheme made under Section 48 of the Planning and Development Acts 2000-2015 or, within the scope of the provisions of section 48 (2) (c) thereof. (Condition No 8, the appealed condition is reproduced in full under section 4.1 above.)

7.2. Adopted Development Contributions Scheme:

It is accepted that the first grant of permission for the existing development is the original grant of permission for the development under P. A. Reg. Ref. 97/1521 which would have preceded the bringing into effect of the statutory framework for Development Contributions provided for in the Planning and Development Act, 2000. Payment of outstanding development levies required in connection with the grant of permission, if any, would have been a matter to be resolved between the planning authority and the developer.

- 7.3 It would appear that the planning authority sought a development contribution under Condition No 11 of the grant of permission under P. A. Reg. Ref. 10/739 because no levies or development contributions had previously been required in connection with the subject development. While this argument may be reasonable, the imposition of a retrospective development contribution does not come within the terms of the prior or current Galway County Council Development Contributions Schemes provided for under Section 48 of the Act.

7.4 Section 48 (2) (c) - special contributions

The payment of a contribution by condition would also not come within the scope of Section 48 (2) (c) of the Act, as claimed in the appeal. Section 48 (2) (c) is reproduced below:

“A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development”.

7.5 The proposed development does not satisfy any of the three essential requirements or characteristics are essential to justify attachment of a of a “special contributions” condition to a grant of permission. The payment must be required (a) in respect of a particular development, (b) specific exceptional costs must be incurred as a result of or in order to facilitate it and, (c) such costs cannot be covered by a Development Contribution Scheme made under Section 48 (2) of the Act.

7.6 It can be concluded therefore that the inclusion of the condition does not come within the scope of the adopted Development Contributions Scheme or the provisions for special development contributions under section 48 (2) (c) of the Acts, the appeal should be upheld and the condition should be removed.

7.7 The references to the Section 48 Development Contribution scheme in Condition No 12 attached to the prior grant of permission under P A. Reg. Ref. 10/739 are noted. However it is understood that this condition was intended to be a “Bond” condition which was included in order to secure the satisfactory reinstatement of the lands when the development is no longer required.

8 **Appropriate Assessment**

8.1 Having regard to the nature and scale the proposed development the retention and continuation of use is sought and which is in situ with no ground works being involved no Appropriate Assessment issues arise. It is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9. **Recommendation**

9.1 In view of the foregoing it is recommended that the appeal be upheld and that the planning authority should be directed to remove Condition No 8 on the basis of the Reasons and Considerations set out in the draft order overleaf.

DECISION.

The Board, based on the reasons and considerations below directs the Galway County Council under Section 48 (13) of the Planning and Development Acts, 2000-2015 to Remove Condition No 8.

REASONS AND CONSIDERATIONS.

Having regard to the planning history for the site according to which no requirements by condition for payment development levies in connection with the original grant of permission under P A. Reg. Ref. P. A. Reg. Ref. 97/1521 and to the Galway County Council Development Contributions Scheme 2010 and the Galway County Council Development Contributions Scheme 2016 in which there are no provisions for the application of a development contribution for retention and continuation of previously permitted communications equipment and support structures development, or for retrospective payments, the Board considers that the planning authority did not properly apply the terms of the Galway County Council Development Contributions Scheme, 2016 in attaching Condition No 8 in which payment of a contribution to the planning authority in the amount of €10,000 is required because there is no provision within the said scheme for the application of a requirement for payment of a contribution in respect of an application for renewal of planning permission.

JANE DENNEHY
Senior Planning Inspector
5th September, 2016.