



An  
Bord  
Pleanála

## Inspector's Report PL11.246838

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<b>Development</b>	Retain 18m high telecommunications structure, associated dishes, equipment cabin and access track at Maidenhead TD, Ballickmoyler, Co. Laois.
<b>Planning Authority</b>	Laois County Council.
<b>Planning Authority Reg. Ref.</b>	15/454.
<b>Applicant(s)</b>	Vodafone Ireland Ltd.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Grant permission with conditions.
<b>Appellant(s)</b>	Vodafone Ireland Ltd. (First party vs. Condition 6)
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	None.
<b>Inspector</b>	Ciara Kellett.

## 1.0 Site Location and Description

1.1. The appeal site is located in a rural area of Co. Laois. It is located c.1km due west of the N80 regional road and c.1.4km north-west of the village of Arles. There are dormer bungalows along the rural road and the mast is located in a field to the rear of one of the houses. The appeal site is stated as being 0.009 hectares. No site visit has been undertaken because this is an appeal against a condition only.

## 2.0 Proposed Development

It is proposed to retain an existing 18m high telecommunications support structure, carrying associated antennae and link dishes, associated equipment cabin, within a secure compound and access track at Maidenhead, Ballickmoyler, Co. Laois. It is stated that the development will continue to form part of Vodafone Ireland Ltd.'s existing GSM and 3G Broadband telecommunications networks.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a decision to **grant permission** subject to 6 conditions. Condition no.6 is relevant to this appeal. It states:

*Prior to the commencement of development, the developer shall pay the sum of €15,000 to Laois County Council, in accordance with the Council's Development Contribution Scheme 2013 – 2017, in respect of public infrastructure and facilities benefitting development in the area of the planning authority, and that is provided or that it is intended will be provided by, or on behalf of, the Council.*

*The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and penalty interest for late payment, in accordance with the terms of the Council's Development Contribution Scheme.*

**Reason:** *It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Laois County Council in respect of the provision/improvement of public services/infrastructure benefitting development in the area of the Planning Authority.*

### 3.2. **Planning Authority Reports**

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Location of the site is acceptable in principle.
- Noted that the applicant had not submitted details required by policy ET9/P32 requiring an indication of other sites assessed; evidence of consultations with other operators with respect to sharing of sites; and no legal right of way agreement was provided. Accordingly, Further Information was sought.
- Following the response to Further Information, the Planner's Report recommends a grant of permission subject to conditions.
- The decision was in accordance with the Planning Recommendations.

### 3.3. **Third Party Observations**

None recorded on file.

### 4.0 **Planning History**

4.1. There are three planning permissions on the site:

- Reg. Ref. 98/448: Permission to erect an 18m high slim latticework mast carrying antennae, with associated equipment housing in a fenced compound with access track. Condition no.2 permitted the structure for a period of 5 years and noted it was to be removed after 5 years, unless another planning application seeking its retention was made.

- Reg. Ref. 03/1194: Retention Permission sought. The development consists of an existing 18m high slim latticework tower carrying antenna with associated equipment housing in a fenced compound. This application is pursuant to condition no.2 of the original grant of planning permission Reg. Ref, 98/448, and
- Reg. Ref. 09/362: Permission granted for retention of an existing 18m high telecommunications support structure, antennas, equipment container and associated equipment within a fenced compound and access track. The development forms part of Vodafone Ireland Ltd.'s existing GSM and 3G Broadband Telecommunications network. Condition no.2 is relevant. It states: *“This permission is for a period of five years from the date of this order. The telecommunications structure and related ancillary structures shall then be removed unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period”*. The final grant of permission was issued on the 2<sup>nd</sup> September 2009.

## 5.0 Policy Context

### 5.1. Laois County Development Plan 2011 – 2017

Chapter 9 of the Development Plan refers to Energy and Telecommunications. Section 9.9 specifically deals with *Telecommunications Masts and Antennae*. The Development Plan refers to the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities” document, published by the Department of the Environment in 1996.

### 5.2. Development Contribution Scheme

Laois County Council adopted their Development Contribution Scheme on 21<sup>st</sup> October 2013. It is noted that the scheme has been reviewed in line with the “Development Contributions Guidelines for Planning Authorities” published by the

Department of the Environment, Community and Local Government in January 2013. Section 6.5 of their scheme refers to *Exemptions and Reductions*. It states “*Telecommunications /Broadband infrastructure (masts and antennae)- Where a general development contribution has been paid for telecommunications apparatus on foot of a 5 year permission (as recommended by the DoEHLG Guidelines on Telecommunications 1996) contributions will not be payable on any subsequent applications for the same structure, unless the existing structure is to be materially altered*”.

The Council includes a list of exclusions to *Exemptions and Reductions*. It states:

*Exclusions: For the purpose of clarity, no exemption or reduction will apply to a Special Development Contribution or to the following types of development:*

- a) Hospitals and similar development*
- b) Third level educational institutions*
- c) Fee paying Schools*
- d) **Retention permission.***

### 5.3. **Guidelines**

The aim of the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities” is to offer general guidance on planning issues so that the environmental impact is minimised, and a consistent approach is adopted by the various planning authorities. 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, updated certain sections of the Guidelines and 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.

The “Development Contributions Guidelines for Planning Authorities” published by the Department of the Environment, Community and Local Government in January 2013, require planning authorities in reviewing their development contributions schemes to include waivers 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”*.

#### **5.4. Natural Heritage Designations**

There are no designated sites within the vicinity. The River Barrow and River Nore SAC (site code 002162) is c. 3.5km away.

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

A first party appeal against condition no.6 only, has been submitted by 4Site, on behalf of Vodafone Ireland Ltd. Condition no.6 requires the payment of Development Contribution of €15,000. The appeal has been lodged under Section 48(10)(b) of the Planning and Development Act.

The grounds of appeal can be summarised as follows:

- The original planning permission was granted in July 1998. This was followed by a retention permission in 2003 and 2009, and a Development Contribution of €15,414 was paid on foot of the 2009 permission. The applicant provides proof of payment as part of the appeal.
- Reference is made to the Department of Environment, Community and Local Government “Development Contributions Guidelines for Planning Authorities” 2013 publication, which clearly states that waivers for broadband

infrastructure from Development Contributions, should be included in Council's Development Contribution Schemes.

- Refers to the Guidelines note in Section 2 which states that the practice of double charging is inconsistent with both the primary objective of levying development contributions and with the spirit of “planning gain” in an equitable manner.
- Refers to the status of the Guidelines under Section 28 of the Planning and Development Act, and that the Guidelines state that all Planning Authorities should commence a review of their existing schemes to ensure compliance.
- Refers to the current Laois Development Contribution Scheme 2013 – 2017, which states in Section 6.5 Exemptions and Reductions “*Telecommunications / Broadband infrastructure (masts and antennae) – Where a general development contribution has been paid for telecommunication apparatus on foot of a 5 year permission (as recommended by DoEHLG Guidelines on Telecommunications 1996) contributions will not be payable on any subsequent application for the same structure, unless the existing structure is to be materially altered.*”
- The Planning Authority should not be “double charging” in this instance.
- Reference is made to other An Bord Pleanála decisions where the Board has previously overturned imposition of additional contributions. Specific reference is made to Board decisions PL11.240686, PL19.238292, PL20.239245, and PL24.240635.

## 6.2. Planning Authority Response

The Planning Authority responded to the grounds of the appeal by stating that in addition to Section 6.5 of their Development Contribution Scheme stating there would be exemptions for telecommunications masts, there is also a statement saying that no exemption or reduction will apply to Retention Permission.

### 6.3. Observations

None

### 7.0 Assessment

- 7.1. The first party has appealed Condition no.6 only. Condition no.6 requires the developer to pay a Development Contribution of €15,000 to the Planning Authority. The first party has appealed the condition under Section 48(10)(b) of the Planning and Development Act 2000, as amended. Section 48(10)(c) of the Planning and Development Act 2000, states that where an appeal is brought in accordance with Section 48(10)(b) and no other appeal of the decision is brought by any other person, the authority may make the grant of permission as soon as may be, after the expiration of the period for making an appeal. The appeal is therefore confined to the consideration of whether or not the terms of the Laois County Council Development Contribution Scheme 2013 – 2017 were properly applied in this instance.
- 7.2. This is a request for retention permission only - for the 18m high telecommunications structure, associated dishes, equipment cabin and access track. There is no new equipment proposed.
- 7.3. The Laois County Council Development Contribution Scheme was adopted on the 21<sup>st</sup> October 2013. It states that the scheme has been reviewed in line with the “Development Contributions Guidelines for Planning Authorities” published by the Department of the Environment, Community and Local Government in January 2013. Section 6.5 of the Scheme refers to Exemptions and Reductions *“Telecommunications / Broadband infrastructure (masts and antennae) – Where a general development contribution has been paid for telecommunication apparatus on foot of a 5 year permission (as recommended by DoEHLG Guidelines on Telecommunications 1996) contributions will not be payable on any subsequent application for the same structure, unless the existing structure is to be materially altered.”* There is a clear exemption for telecommunication infrastructure listed in the



Scheme where a previous contribution has been paid, as is the case in the subject appeal. I would, however, draw the Board's attention to the fact that the original permission which permitted the development for 5 years had lapsed (original grant date of 2<sup>nd</sup> September 2009).

7.4. This planning application was submitted to the Council on the 30<sup>th</sup> October 2015. Taking account of the 5 years of permission of the 2009 grant, plus any accrued days, the 2009 permission has lapsed. I note that the Council, in their reason for applying the condition, did not refer to this fact nor that the Development Contribution Scheme provides for an exclusion when considering a retention development.

7.5. I have reviewed the cases referred to by the Appellant.

- PL20.239245 – This was for retention of a mast in Roscommon County Council area. A Development Contribution was paid on a permission granted in 2006, and in 2011 a further grant of permission was permitted with a condition to pay another contribution. The Board decided to omit the condition because it was considered that the Development Contribution Scheme did not provide for the payment of repeated contributions in respect of the same development.
- PL19.238292 – This was an appeal against a Development Contribution on foot of an application for retention of a mast following an earlier grant for 5 years in 2005. The application was lodged with Offaly County Council in 2010. The Board decided to omit the condition because it was considered that the Development Contribution Scheme did not provide for the payment of repeated contributions in respect of the same development.
- PL24.240635 – Similar to the two cases above, the applicant lodged a planning application in 2012 with Waterford County Council following an original grant for 5 years in 2007. The Board decided it would be an

unreasonable interpretation of the Development Contribution Scheme to require a further contribution.

- PL24.240686 – The original permission was refused permission by Laois County Council in 2006 and subsequently granted by the Board in March 2007. The Council stated in the appeal against the financial contribution of the 2012 application, that the original permission had lapsed. The Board considered that it would be an unreasonable interpretation of the Development Contribution Scheme to require further contribution in this case.

Having regard to the above cases, I note that the Development Contribution Schemes of the Councils referred to, did not specifically clarify that development contributions were payable each time a “continuance of use” application was submitted and that the Board considered it unreasonable that they be interpreted to mean this. This differs from the current Laois Development Contribution Scheme which expressly excludes exemptions for retention permission.

7.6. Having regard to the Council's Development Contribution Scheme which provides for an exemption for Telecommunications Masts where contributions were previously paid but expressly includes an exclusion for retention permission, I am satisfied that the Condition no.6 should remain.

7.7. Appropriate Assessment

Having regard to the nature and scale of development proposed, namely the retention of fully completed works, and to the nature of the receiving environment, no appropriate assessment issues arise and 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.

## 8.0 Recommendation

8.1. I recommend that the Board directs the Council under Section 48 of the Planning and Development Act 2000, as amended, to retain Condition no.6.

## 8.2. Reasons and Considerations

While Laois County Council Development Contribution Scheme 2013 – 2017, provides for an exemption from general development contributions in relation to planning permissions for telecommunications masts and apparatus arising on foot of previous 5 year permissions (as recommended by the “Development Contributions Guidelines for Planning Authorities” published by the Department of the Environment, Community and Local Government in January 2013), it also expressly disallows exclusions in cases of retention permissions. As Planning Authority Reg. Ref. 09/362 expired prior to the lodgement of the subject application with the Planning Authority, the application is subject to the latter provision. It is considered therefore that the terms of the Scheme have been properly applied in this instance.

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Ciara Kellett  
Senior Planning Inspector

19<sup>th</sup> September 2016