



An  
Bord  
Pleanála

## Inspector's Report

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### Development

Retain 24m high telecommunications support structure with antennae, link dishes and associated equipment and fencing at Graigue, Lispole, Dingle, Co. Kerry

### Planning Authority

Kerry County Council

### Planning Authority Reg. Ref.

16/367

### Applicant(s)

Three Ireland Services (Hutchison) Ltd

### Type of Application

Permission.

### Planning Authority Decision

Grant

### Appellant(s)

Three Ireland Services (Hutchison) Ltd

### Observer(s)

None.

### Date of Site Inspection

None

### Inspector

Mary Crowley

## 1.0 Site Location and Description

1.1 The appeal site with a stated area of 0.031 ha is located at Tullaha, Bunane, Kenmare, 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 the retention of an existing 24 m high telecommunications support structure (previously granted permission under reference 09/922 & An Bord Pleanala Ref No PL08.234888 which was a temporary permission for a period of 5 years which has expired) carrying antennas and link dishes together with associated equipment units and security fencing.

2.2. The application was accompanied by a cover letter and a letter from the land owner consenting to the application being made.

## 3.0 Planning Authority Decision

3.1. Kerry County Council granted planning permission subject to 5 conditions. Condition No 2, the subject of this appeal states 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 this contribution is calculated in accordance with the Council 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Index for Capital Goods, Buildings and Construction as published by the Central Statistics Office unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.*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 benefiting the development, as provide for in the Councils prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Plannign and Development Act and that the level of contribution payable should increase at a rate in the manner in that scheme.*

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

The Local Authority Planner recommended that planning permission be granted subject to 5 conditions. Their report also stated that the amenity levy calculation for retention permission is €14,000. Condition No 2 of their report and recommendation refers.

### **3.3. Other Technical Reports**

Kerry Airport states that they will not be making any submission on this application.

### **3.4. Third Party Observations**

None recorded on the file.

### **4.0 Planning History**

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

**PL08.234888 (Reg Ref 09/922)** – Kerry County Council refused permission to Telefonica O2 Ireland Ltd for the retention of a telecommunication structure and associated structures. An Bord Pleanála granted planning permission for 5 years subject to 7 conditions. Condition No 7 required the payment of a Section 48 Development Contribution. No amount was specified in the condition.

4.2. Reference is made in the appeal to the following appeal:

**PL08.245185 (Reg Ref 13/239)** – This was an appeal by Meteor Mobile Communications against the decision by Kerry County Council to refuse permission for the retention of a 25 meter telecommunications monopole and associated works at Lackroe, Kenmare, Co. Kerry. The Planners report noted that under appeal reference PL 08.223776 permission was granted for a five year period for the retention of existing (permitted) development. The report further states that *the Kerry County Council Development Contribution Scheme 2011 provides no exception from the requirement to pay development contributions for 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. Since the Board is considering this application de novo it was recommended that the Board anticipate the amendment of the Kerry County Council Development Contribution Scheme and not apply a contribution condition in accordance with the Circular Letter.* In its decision to grant permission the Board did not attach a Section 48 condition.

## 5.0 Policy Context

## 6.0 Development Plan

6.1 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.

6.2 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.*

6.3 It is also noted that the **Development Contributions Guidelines for Planning Authorities** (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.*

## 7.0 The Appeal

## 7.1. Grounds of Appeal

The **first party appeal against Condition No 2 only** (development contribution of €14,000) has been prepared and submitted by the applicant Three Ireland Services (Hutchinson) Ltd who request that it be removed. The grounds of appeal may be summarised as follows:

The original planning application (Reg Ref 09/922) and An Bord Pleanála PL08.234888 contained a temporary 5 year condition to enable the impact of the development to be reassessed having regard to changes in technology and design during the period of 5 years.

There has been no intensification or material change of use in the structure in the intervening period and it would be an erroneous application of Section 48 of the 2000 Act to apply a development contribution to this existing installation. The original development contribution levied against the original planning application has been paid in full as confirmed by Kerry County Council (email attached).

To levy a second development contribution on this installation is viewed as an attempt at double charging for this existing established site.

Reference is made to appeal decision PL08.242185 that ruled against the imposition of a levied contribution by Kerry County Council.

Kerry County Council has not taken into consideration Circular PL07/12 regarding the inclusion of waivers for broadband infrastructure. Further the imposition of the charge is also against the advice outlined within the guidelines as issued by the Department of Environment “Development Contribution Guidelines for Planning Authorities” in relation to double charging.

## 7.2. **Planning Authority Response**

There is no response recorded on the appeal file.

## 7.3. **Observations**

None recorded on the appeal file.

## 8.0 **Assessment**

8.1 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.

8.2 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.

- 8.3 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.
- 8.4 Contrariwise the Circular Letter 07/12 from the Department of Environment, Community and Local Government 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.
- 8.5 As set out above An Bord Pleanála granted permission for the development now the subject of this retention application in 2010 (PL08.234888 (Reg Ref 09/922) refers) for a period of 5 years subject to 7 conditions. Condition No 7 required the payment of a Section 48 Development Contribution but no amount was specified. In an email dated July 2016 from the Revenue Department, Kerry County Council to the applicant it is stated that *the levies for 09/922 have been paid*. While the amount paid has not been revealed within the appeal file it is reasonable to conclude that amount paid was in line with the Kerry County Council Development Contributions Scheme 2011 which was adopted on the 21st of March 2011 and was to the satisfaction of Kerry County Council, the administrators of the scheme.



Having regard to the information available with the appeal and 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 as per the requirements of 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.

## 9.0 **Conclusion & Recommendation**

9.1 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.

## 9.2 **Reasons and Considerations**

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 decision of Kerry County Council for this site PL08.234888 (Reg Ref 09/922) 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.

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**Mary Crowley**

**Senior Planning Inspector**

12<sup>th</sup> August 2016