



An
Bord
Pleanála

Inspector's Report PL.92.246900.

Development	Retention of 21m high telecommunications support structure, previously granted under reference 10/279 with links, dishes, equipment units and fencing. Aughnagomaun, Horse and Jockey, Co Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	16/600367.
Applicant(s)	Three Ireland Services (Hutchinson) Ltd.
Type of Application	Permission
Planning Authority Decision	Grant Permission subject to conditions.
Appellant	Three Ireland Services (Hutchinson) Ltd.
Date of Site Inspection:	2 nd October 2016
Inspector:	Bríd Maxwell

1.0 Site Location and Description

1.1. The appeal site which has a stated area of .012 hectares is located on the eastern side of Killough Hill within the townland of Aughnagomaun, approximately 4km to the southwest of Horse and Jockey, Co Tipperary. Holycross is approximately 4km to the northwest and Thurles 4.5 km to the north east. The site is occupied by an existing telecommunications installation which comprises a 21m high telecommunications support structure carrying antennas and link dish together with associated equipment units, security fencing and access track. Killough Hill a prominent landscape feature within the surrounding planes is the site of a substantial active limestone quarry. The general area is agricultural in character also with a number of one off dwellinghouses and farmsteads. There is a telecommunication mast 30m in height located approximately 120m to the south.

2.0 Proposed Development

2.1. The proposed development as set out in the public notices relates to the retention of an existing 21metre high telecommunications support structure (previously granted permission under reference 10/279 which was a temporary permission for a period of 5 years) carrying antennae and link dishes together with associated equipment units, security fencing and access track.

2.2. Application drawings (refer to equipment layout plan Drawing No MTY1039-P04 and elevation drawings MTY1039-P06 and MTY1039-P07) depict 4 dishes and 5 antennae (two of which are indicated to be shared). I note that within the appeal grounds it is stated that the retention application refers to a total of 4 dishes and 3 no antenna however equipment layout plan drawings indicate 5 antennae and from observations on site 5 antennae are in situ.

3.0 Planning Authority Decision

3.1. **Decision**

By order dated 16th June 2016 Tipperary County Council decided to grant permission subject to 5 conditions. Condition 5 requires the payment within 3 months of grant of permission of a financial contribution of €12,500 in accordance with the terms of the Development Contribution Scheme.

3.2. **Planning Authority Reports**

The report of the area planner in calculating development contribution notes an increase of 2 dishes and 3 antennae from that permitted by 10/279. The contribution is calculated at a rate of 2,500 per item.

3.3. **Other Technical Reports**

Area Engineer's report makes no comment on the application.

3.4. **Third Party Observations**

Irish Aviation Authority submission makes no observations on the application.

4.0 **Planning History**

10/279 Permission granted to Telefonica 02 Ireland to retain existing 21m high telecommunications support structure carrying antennas and link dishes together with associated equipment container, security fence and access track. Retention permission was granted subject to 10 conditions which included condition 2 requiring the payment of a development contribution of €40,899.74 in accordance with the Section 48 Development Contribution Scheme.

03/300 Permission granted to O2 communications (Ireland) Ltd to retain existing permitted GSM base station installation comprising 21m high lattice antenna support structure carrying 4 GSM antennas and No 1 link dish together with associated telecommunications equipment enclosed in security fencing with access

driveway. Permission was subject to 13 conditions including Condition 1 limiting the permission to a 5-year duration. Condition 2 required the replacement of the lattice structure with a monopole structure.

00/312 Refusal of extension to existing 21m high lattice telecommunications structure to 33m in height. Reason for refusal referred to visual obtrusion.

96/666 Permission granted for 21m high triangular telecommunications structure together with ancillary equipment container. I note from Local Authority's website record that the permission was subject to 10 conditions however details are not available to download.

Adjoining / Adjacent lands

PL92.245693 An Bord Pleanála upheld the Local Authority's decision to grant permission granted to Roadstone for construction and demolition waste recovery facility within existing quarry landholding.

12/67 Permission granted to Vodafone Ireland to replace existing permitted temporary 30m structure (P11/93) with a 30m multi-operator tower carrying telecommunications equipment, cabinets and security fence around the site. Subsequent first party appeal of condition **240601** The Board in accordance with Section 48 of the Planning and Development Act considered that the terms of the development contribution scheme had not been properly applied and directed the local authority to amend the decision accordingly. The adjustment with regard to level of contribution payable related to co-located antennae /dishes to be operated by other operators.

11/93 Permission granted to Vodafone to retain existing 30m high stayed antenna support structure carrying telecommunications equipment together with associated
PL92.246900

containerised equipment shelter and erect additional antennas and link dishes on existing structure, associated cabinets, existing security fencing and access track.

5.0 **Policy Context**

5.1 **Telecommunications Antennae & Support Structures, Guidelines for Planning Authorities, 1996.**

5.1.1 These guidelines detail the various technical and other criteria to be considered in the assessment of applications for telecommunications apparatus. They provide details of the technical specifications of such apparatus in addition to advising on suitable locational options.

5.2 **Circular Letter PL07/12** from the Department of Environment Community and Local Government dated 19th October 2012 issued under Section 28 of the Planning and Development Acts 2000-2012 to update certain sections of the Telecommunications Antennae and Support Structure Guidelines 1996. Elements of the 1996 guidelines which were revised include the cessation of temporary permissions. Where a renewal of a previously temporary permission is being considered, the planning authority should determine the application on its merits with no time limit being attached to the permission. Only in exceptional circumstances where particular site or environmental conditions apply should a permission issue with conditions limiting their life. Circular letter PL07/12 further recommends that the lodgement of a bond or cash deposit with the local authority to effect removal in the case of obsolescence is generally not required. On the issue of health and safety aspects, planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matter in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process.

5.3 **Development Contributions, Guidelines for Planning Authorities, Department of the Environment, Community and Local Government. January 2013.**

5.3.1 The guidelines provide non statutory guidance on the drawing up of development contributions schemes. They require that subject to the overriding principles of proper planning and sustainable development, adopted development contribution schemes should contribute to the promotion of sustainable development patterns, economic activity and to securing investment in capital infrastructure and economic activity. They should reflect the reduced costs of infrastructure provision in recent years relative to when schemes were last revised. Planning Authorities are required to include within their schemes waivers for broadband infrastructure (masts and antennae). In relation to Double charging, the guidelines note 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 has already made a contribution.

6.0 Development Plan

6.1 **The South Tipperary County Development Plan 2009** as varied refers. Section 9/9 Communications Policy TI14 Telecommunications.

6.2 The Tipperary County Council Development Contribution Scheme 2015-2019 was adopted on 12th January 2015 and applies from 1st March 2015 to 31st December 2019. The schedule of contributions is set out at 12.0. In respect of Class 23, a contribution of €2,500 per item of telecommunications equipment applies.

Masts, Antennae, Dishes and Other Apparatus / Equipment for Communication Purposes are addressed on page 13. It is stated that *“where full development contributions have been levied and paid for telecommunications apparatus on foot of a five-year permission (as recommended by the DoEHLG Guidelines on Telecommunications 1996) contributions will not be payable on any subsequent applications for the same structure save where a discount was applied in recognition of the temporary permission. Any new development i.e. additions /*

attachments etc. will be subject to development contributions. Where masts and antennae dish and other apparatus /equipment for communication purposes form part of the National Broadband Plan or a subsequent Government endorsed initiative as defined by the DCENR they will not be subject to development contributions. Development contributions will be waived for co-located antennae, dish and other apparatus / equipment for communication purposes.”

At 11.0 Points to note it is stated in relation to retention permission “*No exemptions or waivers shall apply to any development subject to retention permission save where it applies to a previously permitted development (e.g. temporary permission), and / or in the consideration of a valid planning application received by the Planning Authority within 12 weeks of the coming into effect of the Scheme.”*

7.0 Natural Heritage Designations

Killough Hill is pNHA Site Code 00959.

The Lower River Suir SAC (Site Code 002137) lies approximately 4km to the north and west.

Cabragh Wetlands pNHA (001934) is approximately 3.2km to the north.

8.0 The Appeal

8.1. Grounds of Appeal

The appeal is made solely in relation to condition 5 which relates to the application of a financial contribution under section 48 of the Planning and Development Act 2000. Grounds of appeal can be summarised as follows:

- Tipperary County Council have failed to implement the terms of the scheme correctly in relation to not applying the relevant exemptions.
- Meteor have co-located on the site. The additional equipment on the structure is as a result of Meteor communications sharing the installation. Letter from meteor

confirms that technology on the site which provides GSM, 3G and 4G broadband coverage, Meteor currently share 3 no antennae and 2 no transmission dishes on the structure.

- The increase of additional equipment from that permitted by 10/279 is three pieces and not 5 as listed in the planning officer's report.
- Three Ireland Services (Hutchison) Ltd previously known as Telefonica 03 Ireland Limited has already paid €40,899.74 in full against the original planning application 10/279. Levy represents double charging on the established site.
- Charging per item of telecommunications equipment is unfair and contrary to National Planning Policy with regard to the promotion of site sharing / co-location and may act as an impediment to further site sharing. The charge may also restrict upgrading of existing base stations across the country.
- Development Contribution Guidelines state that the practise of double charging is inconsistent with primary objective of levying contributions and with the spirit of capturing planning gain in an equitable manner.

8.2. Planning Authority Response

The response of the Planning Authority asserts that the development contributions were correctly applied based on the equipment on site.

- Site visit revealed an increase in equipment from 2 no antenna and 2 no dishes (10/279) to 5 no antenna and 4 no dishes. While this conflicts with the submitted drawings it was considered that the development description for this retention permission suitably described the development as existing.
- No information is provided within the application in relation to colocation.

- Section 10.0 and 11.0 of the Tipperary County Council Development Contribution Scheme 2015-2019 sets out that in relation to retention permission no exceptions or waivers shall apply to any developments subject to retention permission save where it applies to a previously permitted development (eg temporary permission) and / or in the consideration of a valid planning application received by the Planning Authority within 12 weeks of coming into effect of this scheme. The application was received outside the 12-week period and the planning authority is satisfied that the development contributions were correctly applied in accordance with the Tipperary County Council Development Contribution Scheme 2015-2019.

9.0 Assessment

9.1 This is a first party appeal against a financial contribution condition applied under Tipperary County Council Development Contribution Scheme 2000. This scheme was adopted on the 12th January 2015 and was made under Section 48 of the 2000 Act. The Board's remit in appeals against financial contribution conditions is restricted to the proper application of the adopted scheme.

9.2 Condition 5 under appeal is as follows:

“ Within 3 months of this grant of permission, a payment of a financial contributions shall be paid to the Planning Authority in respect of public infrastructure and facilities benefiting development in the administrative area of Tipperary County Council that is provided, or intended to be provided, by or on behalf of the Authority in accordance with the terms of the Tipperary County Council Development Contributions Scheme 2015-2019 made under Section 48 of the Planning and Development Act, 2000 (as amended). The amount of the development contribution under this condition is €12,500 which is calculated as follows:

Class 23		Rate 2015			Antenna / Dish	Total
Antenna / Dish	Roads & Community	€2500.00	per item	5	No.	€12,500.00
Total	Contributions					€12,500.00

Liable					
---------------	--	--	--	--	--

- 9.3 The first party makes the case that the development is intended for co-location purposes and notes that in relation to the permitted mast granted under 10/279 that a development contribution of €40,899.74 was paid and therefore the levy represents double charging on the established site. The first party further states that the levying of contributions per item of telecommunications equipment is unfair and contrary to National Planning Policy with regard to the promotion of site sharing / co-location and may act as an impediment to site sharing. It is alleged that the nature of the charge may also restrict upgrading of existing base stations across the country.
- 9.4 As noted previously the Board's remit in the case of appeals against financial contribution conditions is restricted to the proper application of the adopted scheme. Any discussion in relation to the merits of the adopted scheme per se in the context of national policy and in relation to the promotion of site sharing / co-location is not therefore necessary, and I consider it appropriate to confine consideration to the application of the scheme in the context of the development permitted under the current appeal.
- 9.5 The levels of contributions payable for telecommunications masts are set out at Section 12 page 16, with the contribution payable being €2,500 per item of telecommunication equipment. At page 13 it is stated that "*where full development contributions have been levied and paid for telecommunications apparatus on foot of a five-year permission (as recommended by the DoEHLG Guidelines on Telecommunications 1996) contributions will not be payable on any subsequent applications for the same structure save where a discount was applied in recognition of the temporary permission. Any new development i.e. additions / attachments etc. will be subject to development contributions* The scheme provides for a waiver where masts antennae dish and other apparatus / equipment for communication purposes form part of the National Broadband Plan or a subsequent Government endorsed initiative as defined by the DCENR. Development

Contributions will also be waived for co-located antennae, dish and other apparatus / equipment for communication purposes. At 11.0 Points to Note in relation to Retention permission it is set out that *“No exemptions or waivers shall apply to any development subject to retention permission save where it applies to a previously permitted development (eg temporary permission), and/or in the consideration of a valid planning application received by the Planning Authority within 12 weeks of the coming into effect of this scheme.”*

9.6 On the issue of double charging, In accordance with the foregoing the development contribution scheme provides for credit for any levy paid previously and contributions are not payable on *“subsequent applications for the same structure”*. The scheme requires that *“Any new development i.e. Additions / attachments etc. will be subject to development contributions.”* Permission 10/279 required the payment of a development contribution of €40,899.74 and this was paid in full. I have noted above the anomalies within the grounds of appeal in respect of the amount of equipment on the support structure to be retained (appeal submission refers to 4 dishes and 3 antennae). The application as set out within the detailed drawings depicts a total of 5 antennae and 4 dishes. The detailed plans and particulars in respect of the previous permission 10/279 depicted 2 dishes and 2 antennae. On this basis I consider that the Council's calculations based on 5 additional items of equipment is appropriate. The relevant charge is €2,500 per item of telecommunications equipment therefore the contribution applicable is €2,500 x 5 = €12,500.

9.7 On this question of the application of exemption for co-located equipment I note further anomalies in regard to the extent of shared equipment. Drawings indicate that 3 of the items are shared (2 antennae and 1 dish). A letter attached to appeal from Meteor indicates 3 antennae and 2 dishes are shared. In any event I note that as set out at 11.0 page 14 of the Tipperary County Council Development Contribution Scheme it is stated that *“No exemptions or waivers shall apply to any development subject to retention permission save where is applies to a previously permitted development (e.g. temporary permission), and/or¹ in the consideration of*

¹ My emphasis.

a valid planning application received by the Planning Authority within 12 weeks of the coming into effect of this scheme.² This limitation, which restricts the application of this exemption /waiver to an extremely limited period would negate any such exemption in the current appeal case. On this basis I consider that the contribution as applied is appropriate.

10.0 CONCLUSIONS AND RECOMMENDATION

10.1 Having reviewed the application documents, the grounds of appeal and the planning authority's development contribution scheme I consider that the terms of the Development Contribution Scheme have been properly applied in respect of contributions payable in relation to the proposed development. In the light of the above assessment, I recommend that the Board should direct the Council to attach said condition 5.

REASONS AND CONSIDERATIONS

It is considered that the terms of the Development Contribution Scheme were properly applied in respect of condition no 5. It is therefore considered that a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority was warranted for the subject development.

Brid Maxwell
Planning Inspector

3rd September 2016

² Scheme came into effect on 1st March 2015.