



An
Bord
Pleanála

Inspector's Report PL26.247142.

Development	Retain 19.13m high telecommunications mast
Location	Milehouse, Marshalstown, Enniscorthy, Co. Wexford
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20160641
Applicant	Meteor Mobile Communications Ltd
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First v Contribution
Appellant	Meteor Mobile Communications Ltd
Observer	None
Date of Site Inspection	None
Inspector	Mairead Kenny

1.0 **Site Location and Description**

- 1.1. The application details show that the subject development is located at a site of stated area of 0.003 hectares located over 1km from the edge of the built up environs of the town centre. The site context and details of the development on site are not material to this appeal.

2.0 **Proposed Development**

- 2.1. Permission is sought to retain the mast on a permanent basis. The mast is of stated height of 19.13m.

3.0 **Planning Authority Decision**

3.1. **Decision**

- 3.1.1. The planning authority decided to grant permission subject to conditions which include:
- Condition 2 – payment in accordance with the Development Contribution Scheme in the amount of €3,000 in respect of public roads
 - Condition 3- payment in accordance with the Development Contribution Scheme in the amount of €3,000 in respect of community facilities.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The report of the Area Planner notes as follows :

- No levies were applied under the permission granted under 20091489
- Refers to Circular Letter PI07/12 and the requirement that time limits should be attached only in exceptional circumstances
- As levies were not applied under the original permission they are now applicable in accordance with the 2013 Scheme
- Development acceptable in principle due to coverage requirements.

3.3. Other Technical Reports

Area Engineer – recommends permission subject to conditions.

3.4. Prescribed Bodies

None.

3.5. Third Party Observations

None.

4.0 Planning History

Under reg. ref. 20091489 permission was granted for construction of development described as an 18m lattice type support structure in place of an existing 18m lattice type support structure to carry aerials and transmission dish. No condition refers to contributions. The planner's report indicates that there was no previous history.

Under revised details a monopole type mast was presented. The original planner's report includes a calculation for contributions which related to the equipment – this was not attached in the final report or in the decision.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Wexford County Development Plan 2013-2019 applies to the subject site. Objective TC02 states that the Council will “*have regard to the Telecommunications Antennae and Support Structures-Guidelines for Planning Authorities (DOEHLG, 1996)*”.

5.2. National Guidance and Circulars

- 5.2.1. **Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities (July 1996)**

5.2.2. These guidelines set out the government's key ambitions for a top quality telecommunications service throughout the State, whilst recognising that environmental factors will need to be taken into consideration in the determination of relevant applications.

5.2.3. **Circular Letter PL07/12**

5.2.4. This document sought to address issues that had arisen in the intervening period since the publication of the "*Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities*" published in July 1996 and to amend them. Section 2.2 and Section 2.4 refer to use of temporary permissions and bonds and cash deposits, all of which should cease.

5.2.5. **"Development Contributions: Guidelines for Planning Authorities", January 2013, DoECLG.**

5.2.6. The Guidelines consider 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." Broadband is considered in the context of creating the right conditions for economic activity and local authorities are required to provide "waivers to broadband infrastructure (masts and antennae)".

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appeal is against conditions 2 and 3 on the basis that the terms of the Scheme have not been properly applied and the main points are:

- The Council have failed to implement Circular P07/12
- The terms of the scheme do not make provision for charges against retention applications but only for the implementation of contributions on new developments which is not applicable to this case

- The original permission was 20091489 and no development contribution was imposed – therefore this charge is not applicable as per the criteria of the scheme
- Whether or not a previous contribution was applicable or not is not relevant – the Scheme does not provide a mechanism to re-apply these charges
- We refer to case PL08.242185 where the Board previously ruled against the imposition of contributions regarding broadband infrastructure
- The request for contributions does not fall within any of the categories under s.48(a)(b)(c) of PDA 2000 as amended
- The scheme has no basis for determination of a contribution in relation to retention applications for telecommunications structures – it lists only the first permission issued for the mast and this is not the first permission on this site.

6.2. **Planning Authority Response**

The main points are:

- As this is for a full permission and not a temporary one no discount is applicable
- As per the 2013 guidance mast sharing and erection of equipment on buildings will be exempted from contributions – that does not apply in the case of this free standing mast
- There were no levies applied under reg. ref. 20091489 as the mast at 19m high was under the threshold of 50m which applied at the time (2007 scheme)
- The Board is requested to uphold the decision to attach planning levies.

7.0 **Assessment**

- 7.1.1. In the foregoing I have considered the terms of the Scheme in place, the planning history and the relevant Guidance. In terms of precedent cases, of which there are

many, I consider that a relevant case is PL26.244152. That case appears to raise the same issues as the current case and relates to the same Scheme. A copy of the Inspector’s Report and the Board’s Decision are attached.

7.1.2. An extract from page 7 of the Scheme is as follows.

Telecommunication Masts

As required by the “Development Contributions Guidelines for Planning Authorities” reductions will apply to temporary permissions. Mast sharing and erection of equipment on buildings will be exempted from contributions.

Masts		33%	50%	66%
		3 years	5 years	10 years
Water	0	0	0	0
Waste Water and Drainage	0	0	0	0
Roads	3,000	1,000	1,500	2,000
Recreational & Community	3,000	1,000	1,500	2,000
Total	6,000	2,000	3,000	4,000

7.1.3. Under the above there is a clear requirement for payment of contribution as set out under conditions 2 and 3 of the decision of the planning authority, unless there are specified exemptions.

7.1.4. Applications ‘to retain’ telecommunication structures are not listed under the identified exemptions.

7.1.5. There are exemptions for mast sharing, which is not relevant and for equipment on buildings.

7.1.6. It is noted in the extract above and on page 10 of the Scheme that reductions will apply to temporary permissions. This is not a temporary permission.

7.1.7. The merits of the appeal should relate to the Scheme as worded.

7.1.8. A financial levy was not previously required under the terms of the temporary permission granted. As such there is no issue of double charging.

- 7.1.9. The general purpose of contribution schemes relates to the defraying of public expenditure. No payment was previously made in relation to the subject development.
- 7.1.10. Notwithstanding the fact that this application came about as a requirement of the original permission to limit its duration to 5 years, it would not be unreasonable in this case to require a payment.

I conclude that under the terms of the Scheme, there is a requirement to make a payment of €6,000 for the mast and no measures under which a reduction is allowable. Having regard to the terms of the Scheme and national guidance the decision of the planning authority is appropriate.

8.0 Recommendation

- 8.1. I recommend that the planning authority be directed to attach conditions 2 and 3 for the reasons and considerations below.

9.0 Reasons and Considerations

The Board noted that reductions in development levies in respect of Telecommunications Masts as provided for under the terms of the Wexford County Council Development Contribution Scheme, 2013 apply in respect of the granting of temporary planning permissions. As the development proposed is not temporary in nature, this provision in the Development Contribution Scheme is not applicable in this instance. The Board noted that a financial contribution had not been levied under the terms of any previous grant of planning permission for this mast and considered that the terms of the Development Contribution Scheme had been properly applied in this instance and there were no discounts or reductions provided under the terms of the scheme that could be availed of by the developer.

Mairead Kenny

Senior Planning Inspector
16th November 2016