



An
Bord
Pleanála

Inspector's Report PL92.247169.

Development	Retention of 2 no. existing radio links attached to the southern elevation of the Clonmel Rugby Spectator's Stand.
Location	Clonmel Rugby Club, Lawlesstown, Ardgeeha, Clonmel, Co. Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	16600560.
Applicant	Vodafone Ireland Limited.
Type of Application	Permission.
Planning Authority Decision	Grant permission subject to conditions.
Type of Appeal	First Party vs. condition.
Appellant	Vodafone Ireland Limited.
Observer	None.
Date of Site Inspection	9 th November 2016.
Inspector	Ciara Kellett.

1.0 Site Location and Description

- 1.1. The appeal site is located in the Clonmel Rugby Club which is on the R688 Cashel Road just to the north of the town. The Rugby Club is located adjacent to the Ard na Gaoithe Business Park which is home to large multinational companies including Abbot and Boston Scientific.
- 1.2. There are a number of communication masts located within the sports ground. The club's spectator stand with tiered seating, is located at the west end of the site where the subject equipment is. The equipment comprises 2 no. radio link dishes attached to the rear of the spectator stand above a small compound containing some equipment cabins surrounded by palisade fencing. Nearby is a floodlighting pole with antennae mounted on it.
- 1.3. Appendix A includes Site Location Maps and photos.

2.0 Proposed Development

- 2.1. Permission is sought to retain the existing 2 no. radio link dishes attached to the spectator stand and all associated site works including cables and equipment, at Clonmel Rugby Club.

3.0 Planning Authority Decision

3.1 Decision

The Planning Authority decided to grant permission subject to four conditions. Condition 4 which is the subject of the appeal states:

Within one month of the date of this order a payment of a financial contribution shall be paid to the Planning Authority in respect of public infrastructure and facilities benefitting 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 Contribution 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 €5,000 which is calculated as follows:

<i>Class</i>	<i>Rate 2015 per item of equipment</i>	<i>Items of equipment subject to charge</i>	<i>Total</i>
23	€2,500	2 no.	€5,000

Reason: It is considered reasonable that a contribution be made in accordance with the Tipperary County Council Development Contributions Scheme 2015 – 2019 made under Section 48 of the Planning and Development Act 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

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

- The development is in line with the policies of the Clonmel and Environs Development Plan 2013.
- The development has minimal visual impact; there are no Protected Views relating to the sites; the site is removed from national monuments, protected structures; and, is not in close proximity to schools, churches, crèches etc.
- No EIA is required and a screening has been carried out for AA and concluded that AA is not required. The site is outside any flood risk areas.
- Notes that Development Contributions have been paid previously for a single antenna and that the subject proposal contains 2 no. antennae, therefore charges should apply.

3.2.2. Other Technical Reports

- District Engineer – no objections

3.3. Third Party Observations

None

4.0 Planning History

- ABP ref. RL2708 determined that the attachment of a radio link dish to the public spectator stand is development and is not exempted development in June 2010.
- Reg. Ref. 10540 - granted permission in February 2011 to retain the existing 0.3m radio link dish attached to the southern elevation of the spectator stand and all associated site works subject to 5 conditions including a Development Contribution of €5,500.

5.0 Policy Context

The proposal is subject to the policies and objectives of the Clonmel and Environs Development Plan 2013.

5.1. Development Plan

Chapter 5 of the Plan refers to Infrastructure and Chapter 9 refers to Development Management Guidelines.

Section 5.8 specifically refers to Telecommunications. **Policy INF 11** states:

The Council will facilitate proposals for telecommunications masts, antennae and ancillary equipment where it can be established that the maximum telecommunication coverage is achieved with the minimal impact on the surrounding area save in the following locations; (i) At locations detrimental to views, prospects or vistas, (ii) Within significant views of national monuments or protected structures, (iii) In close proximity to schools, churches, crèches, community buildings, other public and amenity/conservation areas and residential areas.

Section 5.9 refers to Access to Broadband. **Policy INF 12** states:

The Council will proactively work with key stakeholders to enhance broadband coverage and will facilitate the continued development of broadband infrastructure in the town in line with national and regional policies.

Section 9.2 refers to Land Use Zoning Objectives and Zoning Matrix. The site is zoned for Amenity (A) which is *To preserve and enhance recreation and amenity areas.*

Section 9.29 provides development management guidelines with respect to Telecommunications. It states:

In the consideration of proposals for telecommunications masts, antennae and ancillary equipment the Council will have regard to the following:

- *The visual impact of the proposed equipment on the natural or built environment, particularly in areas of sensitive landscape or historic importance;*
- *The potential for co-location of equipment on existing masts;*
- *The road networks traversing the plan area and plans for the development of these networks, including any future by-passes, and*
- *Department of the Environment and Local Government “Telecommunications Antennae and Support Structures Guidelines for Planning Authorities” (July 1996), or any amendments thereto.*

Proposals for new telecommunications infrastructure must demonstrate that they have considered alternative sites, impact on public health and the long term plans of the developer in the County and wider area and the plans of other promoters.

5.2. Guidelines

The aim of the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, 1996” 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”*.

5.3. Development Contributions

The Development Contribution Scheme for Tipperary County Council was adopted in January 2015 and runs until December 2019. Section 10 lists Exemptions and Reductions. With respect to Telecommunications the Scheme states the following:

Masts, Antennae, Dishes and other Apparatus/Equipment for Communication Purposes:

Where full development contributions have been levied and 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 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 Department of Communication, Energy and Natural Resources (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. In the case of broadband 'only' providers, subject to such operators demonstrating to the satisfaction of the Planning Authority that their infrastructure provides services to customers who would not otherwise be able to avail of an adequate broadband service such infrastructure will not attract development contributions.

The Scheme considers items of telecommunications equipment as Class 23, and a rate of €2,500 per item is applied.

5.4. Natural Heritage Designations

The site is located approximately 2.5km from Lower River Suir SAC (Site Code 002137).

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against condition no.4 of the planning permission has been submitted by the applicant.

- Considers that the terms of the Development Contribution Scheme 2015 – 2019 have not been properly applied, due to the fact that the subject application was for retention of a previously granted and levied development.
- There is no specific aspect of the current scheme that allows for contributions to be levied on existing masts.
- The subject development is in place for approximately 6 years and has been granted planning permission on two separate occasions – Reg. Ref 10/540 and the current application Reg. Ref. 16600560.
- Contribution of €5,500 has already been paid and it is inconceivable that a contribution of €5,000 is payable on the same infrastructure.
- Refers to other ABP decisions where second contributions were appealed – PL18.238993 and PL11.244705. Also cites similar cases PL03.238101, PL21.241352, PL20.242445, PL16.241460, PL16.241939, PL11.240855, PL26.245312, PL26.245311, PL09.245344 and PL09.245345.

- Refers to Circular PL07/12 which recommends levies are waived for the facilitation of broadband infrastructure.

6.2. Planning Authority Response

The Planning Authority responded stating:

- Planning permission drawings Reg. Ref. 10/540 show a single link dish – the current proposal shows 2 no. antennae.
- Planning Authority consider that development contributions should apply to the additional antennae.
- Having regard to the one additional antenna, it is noted that there is an error in the contributions applied. The condition should be revised to read that the contribution is €2,500 for the addition of 1 no. antenna.

7.0 Assessment

7.1. Appeal against condition

The first party appeal against the Planning Authority decision to grant permission relates solely to condition no. 4. Condition no.4 requires the developer to pay a Development Contribution of €5,000 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 Tipperary County Council Development Contribution Scheme 2015 – 2019 were properly applied in this instance.

I note that the Planning Authority have responded to the appeal stating that the development contribution should be reduced to €2,500, accepting that the contribution for 1 radio link dish has already been paid on foot of permission Reg. Ref. 10/540.

The current Development Contribution Scheme states that items of communication fall into Class 23 and a rate of €2,500 is to be applied to each item of communication equipment.

There are now two radio links installed to the rear of the spectator stand. ABP ref. RL2708 determined that the attachment of a radio link dish to the public spectator stand is development and is not exempted development in June 2010.

The Scheme adopted by the Council is not very clear. Section 5.3 of this Report above outlines the relevant sections of the Council's Scheme to be applied with respect to such infrastructure. The second sentence of the relevant section would appear to fully support the Council in the application of an additional levy - *Any new development i.e. additions/attachments etc. will be subject to development contributions*. However, the fourth sentence of the same section states *Development Contributions will be waived for co-located antennae, dish and other apparatus/equipment for communication purposes*. This appears to contradict the second sentence. However, when read after the third sentence, that refers to equipment that forms part of the National Broadband Plan and which states that contributions for such equipment will be waived regardless, the fourth sentence is assumed to refer to such Government initiatives.

The appellant has not indicated that the subject proposal is part of the National Broadband Plan or any other Government initiative, thus, I am of the opinion that new equipment has been installed subsequent to the initial grant and a contribution should be applied. The condition should be amended to read €2,500 only in recognition of the fact that the applicant has already paid for one radio link and this should not be subject to a "Double Charge".

7.2. Relevant ABP Cases

I have reviewed all the cases referred to by the applicant.

- PL03.238101, PL21.241352, PL20.242445, PL16.241460, PL16.241939, PL11.240855, PL26.245312, PL26.245311, PL09.245344, PL09.245345 are for the most part for retention of the same equipment and no new equipment was proposed, hence condition was removed by the Board.

7.3. **Appropriate Assessment**

Having regard to the nature and small scale of development proposed, 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**

The Board based on the reasons and considerations set out below, directs the said Council under subsection (10) (b) of Section 48 of the Planning and Development Act, 2000 as amended, to AMEND condition No. 4.

9.0 **Reasons and Considerations**

Having regard to:

- (a) the provisions of the Clonmel and Environs Development Plan 2013,
- (b) the provisions of the Tipperary Development Contribution Scheme 2015 - 2019, and
- (c) the nature of the proposal which does include new equipment which has not been explicitly stated as being part of the National Broadband Plan or other specific government initiative,

the Board considered that the new equipment that has been installed, subsequent to the initial grant of permission, is subject to a levy as provided for in the Development Contribution Scheme. Therefore, the condition should be amended as follows:

Condition no.4:

Within one month of the date of this order a payment of a financial contribution shall be paid to the Planning Authority in respect of public infrastructure and facilities benefitting 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 Contribution 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 €2,500 which is calculated as follows:

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Ciara Kellett
Senior Planning Inspector
23rd November 2016