



An
Bord
Pleanála

Inspector's Report PL11.247629.

Development	Retention of 36 metres high telecommunications support structure carrying antennae and link dishes with associated equipment.
Location	Trumra, Mountrath, County Laois.
Planning Authority	Laois County Council.
Planning Authority Reg. Ref.	16/466.
Applicant(s)	Three Ireland Services (Hutchison) Ltd.
Type of Application	Retention of permission.
Planning Authority Decision	Permission with conditions.
Type of Appeal	First Party
Appellant	Three Ireland Services (Hutchison) Ltd.
Observer(s)	Click here to enter text.
Date of Site Inspection	8th December 2017.
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The site is located in an area of forestry in a rural area, approximately 5 kilometres southeast of the village of Mountrath in County Laois. The mast is located adjoining a forestry road, which is off a minor local road, which, in turn, approximately 1.7 kilometres to the north has a junction with the R445 Portlaoise Mountrath Regional Route and which was formerly the N7 Portlaoise Mountrath National Primary Route.
- 1.2. On the site is an enclosed fenced compound within which, is located a 36-metre-high latticed framed telecommunications support structure with antennae and dishes mounted on the structure and three equipment cabins. The fence is 2.4 metres in height with a double gate to provide access to the compound.

2.0 Proposed Development

- 2.1. The development which is subject of this appeal is for the retention of a 36 metres high telecommunications support structure carrying antennae and link dishes with associated equipment and security fencing. The public notices refer to a previous permission granted for a period of 5 years (PA Ref 1125).

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to grant planning permission subject to 7 conditions. The following

- Condition no.2 refers to reinstatement of the site be no longer required for the current use.
- Condition no. 3 refers to no material change to the mast without a prior grant of planning permission.
- Condition no. 6 refers to co-location.

- Condition no.7 requires the payment of a contribution of €15,000 in accordance with the council's development contribution scheme 2013-2017.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The planning report refers to;

- The site history;
- An assessment which refers to the surrounding area and the context of the site an area. Permission was recommended

4.0 **Planning History**

4.1. The site has a planning history.

ABP Ref. No. PL11.204479/P.A. Ref. No. 03/722.

The Board on appeal granted permission for a 6 metre support structure overturning the P.A. decision to refuse permission.

P.A. Ref. No. 11/25

Permission granted for the retention of mast and associated structures. The permission was for a seven years and this period is clearly stated in condition no.2.

Condition no. 8 required payment of a development contribution of €15,100.

5.0 **Policy Context**

5.1. **National Guidelines**

I refer to **Circular Letter: PL 07/12 Telecommunications Antennae and Support Structures Guidelines** which was issued to update certain sections of the Telecommunications Antennae and Support Structures Guidelines (1996).

In section 2.2 Planning authorities are therefore advised that from the date of the Circular Letter, it is indicated that *“attaching a condition to a permission for telecommunication masts and antennae which limit their life to a set temporary period should cease. 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”*.

Section 3 refers to Draft Guidelines on Contribution Conditions; that there is a requirement for greater consistency in Development Contribution Schemes on a national basis and that the Draft Guidelines require *“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”*.

Development Contributions Guidelines for Planning Authorities January 2013.

Section 2 of the guidelines refers to supporting economic development.

In relation to a retention permission it is indicated that *“no exemption or waiver should apply to any applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications”*.

There is also reference to double charging and the guidelines indicates 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”*.

5.2. 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 and

refers to the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities” document, published by the Department of the Environment in 1996 as the basis of policy in the county.

**5.3. Laois County Council Development Contribution Scheme 2013 – 2017.
Adopted effective from 1st November 2013.**

Section 6.5 of the scheme refers to exemptions and reductions categories of development which are exempted from the requirement to pay development contributions or will pay a reduced rate, as stated, under the scheme are outlined.

In relation to telecommunications/broadband infrastructure (masts and antennae), it is indicated “*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. Masts and antennae, dish and other apparatus/equipment for communication purposes which form part of the National Broadband Scheme (NBS) as defined by the Department of Communication, Energy and Natural Resources (DCENR) will receive a 100% reduction in development contributions. Any new buildings associated with masts and antennae will be charged at the commercial rate*”.

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.*

Table 2 category J of the Laois County Council Development Scheme 2013-2017 refers to a charge of €15,000 per telecommunication mast.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal relates to an appeal of condition no.7 of the planning authority's decision to grant permission.

- Condition no.7 requires the payment of a contribution of €15,000 but the applicant has already paid €15,100 in full in respect of application ref. no. 11/25.
- It is considered an erroneous application of Section 48 to levy a second development contribution on the same installation.
- There is no intensification of use or material change of the structure in the intervening period.
- Reference is made to the Department of the Environment guidelines on Development Contributions where in section 3.2 it is indicated the practice of double charging is inconsistent with the primary objective of development contributions.
- There is no further planning gain, no additional planning impact or pressure on infrastructure by this application.
- Reference is made to similar applications adjudicated by the Board including two by Laois County Council PL11.240686 and PL 11.246838 where the Board found that the county council failed to apply the imposition of additional development contribution properly under council's development contribution scheme 2013-2017.
- The Planning Authority have failed to take into account Circular PL07/12 that all future development contribution schemes must include waivers for broadband infrastructure provision and a condition requiring a contribution should cease.

- The development is for the provision of broadband infrastructure and there is reference to a Board decision PL08.242185 where the Board ruled against the imposition of contributions regarding broadband infrastructure.
- There is also the inconsistency regarding exemptions under the scheme in which no imposition of contribution applies solely to a previous 5-year temporary permission and other time periods are excluded. The planning authority granted a 7-year permission in relation to the previous permission on the site 11/25 and the applicant would have accepted a five-year temporary permission.

6.2. Planning Authority Response

The planning authority in a response dated the 20th of December 2016 refers to,

- The condition was included in accordance with the present contribution scheme.
- Reference is made to item J Table 2 of the Laois County Council Development Scheme 2013-2017 where masts of the type proposed for retention are subject to a charge of €15,000 euro.
- In section 6.5 under the heading exemptions and reductions there are exemption or reduction for retention permission.

7.0 Assessment

This is third party appeal against condition no.7 of the planning authority's decision to grant planning permission.

- 7.1. I wish to initially indicated there would appear to be some confusion arising from the public notices as the applicant refers to a five-year permission under P.A. Ref. 11/25 where the permission granted was actually for a period of seven years. The permission has not expired and will not until April 2018 so there is a valid permission for a mast on the site until the expiry of the permission. There would also appear to be no material differences in relation to the mast currently applied for and the mast granted permission under 11/25. The applicant appears to have made the application for retention on the basis that the permission has expired but this is not

the case. The applicant it would appear need not, therefore, on the basis of the information available, have made an application or applied for retention permission.

- 7.2. The planning authority assessed the application as a retention application and included condition no.7, which requires the payment of a contribution of €15,000 in accordance with the council's development contribution scheme 2013-2017.
- 7.3. Specifically in relation to the County Council's scheme, in section 6.5 in relation to exemption/reductions there is reference to telecommunications/broadband infrastructure (masts and antennae) where, it is indicated, "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. Masts and antennae, dish and other apparatus/equipment for communication purposes which form part of the National Broadband Scheme (NBS) as defined by the Department of Communication, Energy and Natural Resources (DCENR) will receive a 100% reduction in development contributions. Any new buildings associated with masts and antennae will be charged at the commercial rate".
- 7.4. The basis of applying this condition, however, the council's development contribution scheme does also indicate that the exemptions and reductions do not apply to retention applications which are clearly excluded from an exemption and or reduction under the provisions of the scheme. In applying condition no.7, the Planning Authority contend, therefore, the current development contribution scheme is correctly applied as the application is for retention and this the basis for the imposition of condition no. 7.
- 7.5. Specific to the current appeal, I would accept that there would appear to be no material alteration of the mast; there is no intensification; the mast is broadband infrastructure provision and there is a difficulty in understanding why a seven-year permission was applied when a five-year duration was generally applied. I would also consider that if the application was for a permission as distinct from a retention application a 100% waiver would and should apply. There is no dispute that a

contribution charge was applied in a previous grant of temporary permission complied with.

- 7.6. The applicant has referred to Board's decisions in particular in relation to mast developments where a contribution condition was initially applied by way of condition and which was complied with by the applicant, and in a subsequent application a further contribution by way of condition was included in the planning authority's decision. In relation to two Board decisions in County Laois, PL 11.240686 and PL 11.246838, the Board considered that the attachment of the condition would amount to double charging for the same infrastructure and would be unwarranted.
- 7.7. In PL 11.246838, in considering a mast under the current development contribution scheme, the Board considered *"that the 'Exclusion' in the case of applications for retention planning permission stated in the final bullet point of Section 6.5 of the scheme in respect of 'Exemptions and Reductions' that might otherwise apply under the terms of the scheme is a general exclusion that does not override nor negate the specific provision contained within Section 6.5 of the scheme as it applies to Telecommunications/Broadband infrastructure (masts and antennae). The specific provision in respect of Telecommunications/Broadband infrastructure (masts and antennae) provides that where a development contribution has already been paid, contributions will not be payable on any subsequent structure unless the existing structure is to be materially altered."* In effect the specific provision contained within the scheme in respect of telecommunications masts was not negated by reference to the more general provision contained within the scheme in respect of retention planning permissions.
- 7.8. The issue, therefore, is whether the planning authority has correctly applied the development contribution scheme. The scheme is clear in relation to waivers exemptions and reductions in relation to masts. I note that, in relation to exclusions, it is indicated "for the purpose of clarity, no exemption or reduction will apply to Special Development Contributions or to the following types of development" and subsection (d) in this regard, indicates retention permission. In this regard the scheme does adhere to national guidance.
- 7.9. National guidance on development charges is also, however, unambiguous in relation to the practice of 'double charging' and 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. Irrespective of whether the application is a retention or otherwise, therefore, no double charge should apply.

- 7.10. In applying exclusions on retention the application of the blanket exclusion on retention applications, however, does not adhere with the Circular Letter: PL 07/12 Telecommunications Antennae and Support Structures Guidelines, in particular where it is specifically indicated that **all** future Development Contribution Schemes must include waivers for broadband infrastructure provision. This guidance it would appear does not advocate to exclude retention permission from a waiver.
- 7.11. In effect, specific provision is contained within the current development contribution scheme in respect of telecommunications masts which adheres to Circular Letter: PL 07/12 and given the clarity of this provision it is not, I consider, negated by reference to the more general provision contained within the scheme in respect of retention permissions. There is also the clear implication in national guidance to avoid double charging and there is nothing in the proposal as submitted in relation to addition or intensification to warrant application of an additional charge.
- 7.12. In this context condition no. 7 should be removed.

8.0 Recommendation

- 8.1. Having regard to the nature of the condition the subject of the appeal and based on the reasons and considerations set out below, the Board is 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 directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to REMOVE condition number 37

9.0 Reasons and Considerations

Having regard to the fact that in the case of the current appeal a financial contribution had already been paid and the structure has not been materially altered, the Board concluded that the terms of the scheme had not been properly applied by

the planning authority in respect of condition number 7 as attached to the planning authority notification of decision to grant planning permission. In these circumstances, the Board considered that the attachment of the condition would amount to double charging for the same infrastructure and would be unwarranted.

Having considered the provisions of the Laois County Council Development Contribution Scheme 2013 – 2017, the Board considered that the 'Exclusion' in the case of applications for retention planning permission stated in the final bullet point of Section 6.5 of the scheme in respect of 'Exemptions and Reductions' that might otherwise apply under the terms of the scheme is a general exclusion that does not override nor negate the specific provision contained within Section 6.5 of the scheme as it applies to Telecommunications/Broadband infrastructure (masts and antennae). The specific provision in respect of Telecommunications/Broadband infrastructure (masts and antennae) provides that where a development contribution has already been paid, contributions will not be payable on any subsequent structure unless the existing structure is to be materially altered.

Derek Daly
Planning Inspector

14th February 2017