



An
Bord
Pleanála

Inspector's Report PL08.248143

Development	Retain existing 20 metre telecommunications structure and wooden fence compound previously granted under reg. ref. 11/596 (PL08.239638).
Location	Castleview, Castleisland, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	16/1289
Applicant	ESB Telecoms Ltd.
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	1 st Party v. Condition
Appellant	ESB Telecoms Ltd.
Observers	None
Date of Site Inspection	None
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

- 1.1. The site is as previously described on file reference PL08.239638 and is as follows:
- 1.2. The site is located within the compound of an existing ESB substation situated on the southern side of the N21 Tralee-Castleisland National Road approximately 350m northwest of Main Street, Castleisland, Co. Kerry. It has a stated site area of 0.00378 hectares and is presently occupied by an existing free-standing, wooden pole, telecommunications support structure and associated equipment cabinets, set within a fenced enclosure located to the rear of the main compound.

2.0 Proposed Development

- 2.1. Permission is being sought for the retention of an existing 20m high, freestanding, wooden pole telecommunications support structure carrying telecommunications equipment within an existing compound defined by 1.8m high wooden fencing as previously approved under ABP Ref. No. PL08. 217660 and PL08.239638.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 3 conditions.

Condition 2 requires a €14,000 financial contribution in accordance with the prevailing Development Contribution Scheme.

3.2. Planning Authority Reports

The Planner's report notes that the levy due under 11/596 of €14,000 has not been paid and should be attached to a grant of permission

3.2.1. Other Technical Reports

National Road Design Office has no observations.

3.3. **Prescribed Bodies**

TII has no comment to make.

3.4. **Third Party Observations**

Observations received by the planning authority have been forwarded to the Board and are on file for its information. Issues raised relate to proximity to adjoining property and impact on property value.

4.0 **Planning History**

- 4.1. **PL08. 239638** (11/596) : permission granted to retain existing 20m high, free standing wooden pole telecommunication structure, carrying antennae and communication dishes, within an existing 1.8m high wooden fence compound previously granted temporary permission ABP Ref. PL08. 217660 and permission to attach 3 antennae and 3 dishes to allow for future third party co-location.

Condition 2 limited the duration of the permission to 5 years.

Condition 4 required a financial contribution in accordance with the relevant Section 48 Development Contribution Scheme.

- 4.2. **PL08.217660**(656/06)– permission granted for telecommunications structure and associated equipment.

Condition 1 limited the duration of the permission to 5 years.

Condition 6 required a financial contribution in accordance with the relevant Section 48 Development Contribution Scheme.

5.0 **Policy Context**

5.1. **Kerry County Development Plan 2015-2021**

Objectives ICT-1 to ICT-5 seek to support and facilitate the sustainable delivery of ICT infrastructure, broadband networks and digital broadcasting in the County.

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

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).

5.3. **Natural Heritage Designations**

None in the immediate vicinity

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The 1st Party appeal against condition 2 requiring a €14,000 financial contribution in accordance with the Development Contribution Scheme can be summarised as follows:

- Two development contributions have been paid for the same development under refs. 06/656 (PL08.217660) and 11/596 (PL08.239638). The requirement to pay a 3rd contribution constitutes double charging.
- The Kerry County Council Development Contribution Scheme 2011 addresses telecommunications mast under two headings; (a) telecommunications mast and (b) retention of telecommunications mast. The subject development is not an unauthorised development and has a valid permission until 17th April 2017 and is therefore not retention permission. Permission was sought to ensure compliance with condition 2 of PL08.239638 which sought to enable the impact of the development to be reassessed

having regard to changes in technology and design during the period of 5 years.

- Precedent has been set in cases PL26.245702 and PL26.242719.
- Ministerial Circular letter P07/12 states 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 Department of Communications, Climate Action and Environment in the Report of the Mobile Phone and Broadband Taskforce, December 2016, notes that the application of development contributions to telecommunications infrastructure will cease in every local authority area from early 2017.

6.2. Planning Authority Response

None received. Section 132 notice subsequently issued. Again no response received.

6.3. Observations

None

7.0 Assessment

The current appeal is made under Section 48(10)(b) of the Planning and Development Act, 2000 as amended. Consequently, the question to be addressed is whether the terms of the development contribution scheme have been properly applied by the planning authority in its imposition of condition No. 2. The Planning Authority did not avail of the opportunity to respond to the grounds of appeal.

This constitutes the 3rd application before the Board relating to the telecommunications infrastructure on the site. In the first instance permission was granted for same under PL08. 217660 in which condition 6 sought a contribution in accordance with the relevant Section 48 Development Contribution Scheme. The permission was for a period of 5 years. The appellant in the grounds of appeal stated that €2500 was paid in compliance with same. Subsequent to the

requirements of condition 1 attached to the said decision limiting the duration of permission an application to retain the infrastructure was sought and was granted under ref. PL08. 239638 in 2012. Again a 5 year permission was stipulated. In addition condition 4 required a financial contribution in accordance with the Section Development Contribution Scheme. The appellant in the grounds of appeal stated that €14,000 was paid in compliance with same.

As per the current Kerry County Council Development Contribution Scheme a distinction is made between (a) telecommunications mast and (b) retention of a telecommunications mast. I submit that the former does not apply as the infrastructure currently exists and is not a new development. In terms of the latter I would concur with the appellant's reasoning that the current application, whilst seeking to retain the telecommunications infrastructure on the site is doing so as a consequence of the requirements of condition 1 attached to the earlier permission which was due to expire on the 17/04/17. The application was lodged with the planning authority on the 22/12/16 within the relevant period. As such the infrastructure was subject of an extant permission at the time of the lodgement of the application and as such did not constitute unauthorised development.

On this basis therefore I submit that the appellant has paid the relevant development contributions in the previous cases and that the application of a further requirement in this instance constitutes double charging. This runs counter to the guidelines for the planning authorities on development contributions which states that the practice of double charging is inconsistent with the primary objective levying contributions and with the spirit of capturing planning gain in an equitable manner.

The Board is also advised of the precedent set by similar cases adjudicated by it where comparable issues arose including PL26.245702, PL26.242719, PL03.239094 and PL19.238292.

8.0 Recommendation

I recommend that the Planning Authority be directed to remove condition 2.

DECISION

The Board considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition number 2 and directs the said Council under subsection (10) (b) of section 48 of the Planning and Development Act, 2000, as amended by section 30 of the Planning and Development Act, 2010, to REMOVE condition number 2 and the reason therefor.

REASONS AND CONSIDERATIONS

The proposed development is for the retention of an existing telecommunications structure and wooden fence compound. Having regard to the permissions for this mast for a temporary period granted under register reference numbers PL08.217660 (656/60) and PL08.239638 (11/596) which included conditions for a financial contribution under the Development Contribution Scheme and which were complied with by the applicant, it is considered that the appropriate contribution has been paid in respect of this development and it would be an unreasonable interpretation of the Development Contribution Scheme to require a further contribution in these circumstances.

Pauline Fitzpatrick
Senior Planning Inspector

June 2017