



An
Bord
Pleanála

Inspector's Report PL.08.248324

Development	Retention of 35m high telecommunications mast.
Location	Knockanore Mountain, Urlee, Lisselton, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/29
Applicant(s)	TowerCom Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party v Condition
Appellant(s)	As Above
Observer(s)	None
Date of Site Inspection	N.A.
Inspector	Kenneth Moloney

Contents

1.0 Introduction.....	3
2.0 Proposed Development	3
3.0 Planning Authority Decision.....	3
3.2. Third Party Observations	4
4.0 Planning History.....	4
5.0 Policy Context.....	5
5.1. Development Plan.....	5
6.0 The Appeal	5
7.0 Planning Authority Response.....	6
8.0 First Party Responses	6
9.0 Assessment.....	7
10.0 Recommendation	9

1.0 Introduction

- 1.1. This is a first party appeal against a financial contribution condition which was attached to the planning authority's decision to grant planning permission for development consisting of the retention of a 35-metre high telecommunications mast together with associated equipment.
- 1.2. As this is an appeal in respect of a financial contribution, the provisions of Section 48 of the Planning and Development Act, 2000 – 2010, apply and the Board is restricted to considering this matter alone and cannot consider the matter de nova. I have therefore confined my assessment to Condition no. 2 of the local authority permission.
- 1.3. Having regard to the nature of the appeal before the Board (i.e. first party against a condition), the information available on file, a site inspection of the appeal site was not deemed necessary in this instance.

2.0 Proposed Development

- 2.1. The proposed development consists of the retention of an existing 35 metre high telecommunications mast together with associated equipment as previously granted under An Bord Pleanala appeal ref. 239454.

3.0 Planning Authority Decision

Kerry County Council decided to **grant** planning permission subject to 4 no. conditions. Condition no. 2 is relevant to the appeal submission.

Condition no. 2 states that 'Within 3 months of receipt of this decision, the developer shall pay contribution of Eur 14,000 to Kerry County Council (Planning Authority) in respect of community infrastructure, environmental amenities and facilities benefiting the development. The amount of this contribution is calculated in accordance with the Council's prevailing Development Contribution Scheme and will be increased from January 1st 2018 and annually thereafter (unless previously discharged) in line with the Wholesale Price Index for Capital Goods, Building and

Construction as published by the Central Statistics Office unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.

Reason; It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefiting the development, as provided for in the Council's prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act and that the level of contribution payable should increase at a rate in the manner specified in the scheme.

3.1. **Planning Authority Reports**

3.1.1. The main issues raised in the planner's report relevant to condition no. 2 are as follows;

Area Planner

- Condition no. 4 of appeal ref. 08.239454 required the submission of a development levy €14,000.
- The Revenue Department of Kerry County Council confirmed that same levy has not been paid.
- Therefore a development levy of €14,000 is recommended.

3.1.2. **Submission;** - The Revenue Department of Kerry County Council confirms that €14,000 has not been paid.

3.2. **Third Party Observations**

None.

4.0 **Planning History**

- L.A. Ref. 11/502 – Permission **granted** on appeal (appeal ref. 239454) to retain an existing 35m high telecommunications mast together with associated equipment in accordance with L.A. Ref. 06/1234. Kerry County Council refused permission based on 1km location to residential properties.

- L.A. Ref. 06/1234 – Permission **granted** on appeal (appeal ref. 218403) to retain an existing 35m high telecommunications mast together with associated equipment in accordance with L.A. Ref. 98/3137. Kerry County Council refused permission based on 1km location to residential properties.
- L.A. Ref. 98/3137 – Permission **granted** by KCC to erect 35m high telecommunications mast and carry out associated works.

5.0 Policy Context

5.1. Development Plan

The operational Development Plan is the Kerry County Development Plan, 2015 – 2021.

6.0 The Appeal

The following is the summary of a first party appeal submitted by the applicant's agent;

- This appeal is in relation to condition no. 2 and the development levy of €14,000.
- The Department of Environment Guidelines (2013) required Planning Authority to waiver from any contributions for broadband infrastructure.
- The subject mast is carrying wireless broadband which is the only method of delivering broadband in many parts of rural Ireland.
- It is submitted wireless broadband radio masts, such as the current proposal, are critical infrastructure for 21st century Ireland.
- It is submitted that critical infrastructure should not be levied with additional county taxes.

- The granting of planning permission should not carry a development contribution and Kerry County Council should have adopted a new development contribution scheme.

7.0 Planning Authority Response

The following is a summary of a response by the local authority;

- €14,000 is the amenity levy for retention permission.
- Condition no. 4 of appeal ref. 239454 required the submission of a development levy.
- The Revenue Department of Kerry County Council has confirmed non payment of €14,000.
- It is recommended that this €14,000 is attached to the grant of permission.

8.0 First Party Responses

The following is the summary of a response submitted by the applicant's agent;

- In the 2012 permission there was a condition that required a reinstatement bond.
- A reinstatement bond of €12,000 was paid to Kerry County Council in October 2012 following engagement between Kerry County Council and the applicant.
- The requirement of a reinstatement bond has been since abolished.
- The purpose of this bond was to facilitate the satisfactory reinstatement of the site in the event of the base station becoming obsolete.
- Despite the engagement between both parties in 2012 at no point did Kerry County Council request a development levy.
- Shortly after the payment of this bond in 2012 the Department issued a circular PL07/12. This circular considered that the requirement to pay a bond as per 1996 guidelines is no longer required. Instead of the payment of a

bond the circular recommends a condition stating that when a site is no longer used that it is reinstated at the owners expense.

- The 2013 Guidelines recommend waivers for broadband infrastructure masts and antenna.
- It is submitted that the current mast carries antennae for schools broadband projects.
- It is submitted that having regard to the 2012 and 2013 guidelines that a development contribution is no longer required and should not be paid.
- It is submitted that should An Bord Pleanala consider that the development contribution is necessary that it should be off-set against the reinstatement payment which has been abolished in 2012.

9.0 Assessment

As referred to in the introduction above this appeal assessment solely assesses Condition no. 2 of the planning authority's decision.

Condition no. 2, stated above, requires the developer to make a financial contribution of €14,000 to the local authority for the provision of infrastructure.

I would acknowledge that Section 48 (3) (a) of the Planning and Development Act, 2000 – 2010, sets out that the Development Contribution Schemes shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities. The Board must ensure, in the appeals process, that the scheme has been applied appropriately. I would consider that the legislation in this case provides that the Board, in considering the type of appeal, has to decide whether or not the terms of the Development Contribution Scheme have been properly applied by the Planning Authority. It cannot enquire into, nor determine, any issue relating to the rights or wrongs of the Scheme itself.

The relevant development contribution scheme is the Kerry County Council, Development Contribution Scheme, 2011. The Kerry County Council Development Contribution Scheme states that the appropriate contribution for the retention of a telecommunications mast is €14,000.

The appellant submits that development contributions for broadband infrastructure shall be waived in accordance with Development Contributions, Guidelines for Planning Authorities, 2013. I would acknowledge that the 2013 Guidelines state that planning authorities are required to include in their development contribution schemes '*waivers for broadband infrastructure (masts and antennae)*'. The Development Contributions, Guidelines for Planning Authorities, 2013 also state 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 application*'. It is important to note that the report from the Planning Authority states that the applicant has not previously paid a development contribution in accordance with the conditions of the two previous permissions. This would therefore imply that development contributions are outstanding from permissions under appeal ref. 218403 and permission granted under appeal ref. 239454.

I would acknowledge that the 2013 Guidelines provide for a waiver for Development Contributions for telecommunications masts. However the same guidelines also state that no waiver shall apply to a retention permission. I would conclude, having regard to the national guidelines, which explicitly state that no exemption or waiver should apply for any applications for retention development, that the current application would not qualify for a waiver or exemption. The current application is a retention application, for which no development contributions have been previously paid.

The relevant Development Contribution Scheme, for the purpose of this appeal, preceeds the national guidelines and it is therefore understandable that the current

Kerry County Council Development Contribution Scheme, 2011, has no reference to waivers for broadband infrastructure.

A second possibility for considering a waiver for a development contribution is in the case of double charging. In considering whether a waiver should apply I would be of the opinion that had a development contribution been previously paid then the charging of an additional development contribution charge would amount to double charging which would contravene the 2013 guidelines. The Development Contributions, Guidelines for Planning Authorities, 2013, recommend against double charging, however in this case no development contribution has been received in the first instance and therefore double charging would not apply.

I would acknowledge the response submission by the applicant and the argument that the reinstatement bond is off-set against the development contribution charge. However I would note that the 2012 guidelines have no provision to off-set the reinstatement bond from the development contribution charge and the guidelines do not refer to reimbursements of reinstatement bonds previously paid. I would assume that these reinstatement bonds are held in place until such time that the use ceases on the site.

Having reviewed the relevant development contribution scheme, 2011, it is evident that the appropriate charge for the retention of a telecommunications mast is €14,000. I would consider that the development contribution scheme has been applied correctly.

10.0 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 – 2010, to **RETAIN** condition No. 2 so that it shall be as follows:

REASONS AND CONSIDERATIONS

It is considered that:

The terms of the Development Contributions Scheme were correctly interpreted in respect of Condition No. 2, insofar as the development is subject to financial contributions under the Scheme, having regard to advice of Development Contributions, Guidelines for Planning Authorities, 2013.

Condition no. 2

The developer shall pay to the planning authority a financial contribution of €14,000 (fourteen thousand) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000. The contribution shall be paid within six months of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act, 2000 – 2010, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Kenneth Moloney
Planning Inspector
21st July 2017