



An
Bord
Pleanála

Inspector's Report 01.248446

Development

Retention of telecommunications support structure with wind turbine carrying antennae, link dishes, and telecommunications equipment containers and cabinets.

Location

10a Barrowside Business Park, Sleaty Street, Graiguecullen, County Carlow.

Planning Authority

Carlow County Council

Planning Authority Reg. Ref.

17/50

Applicant(s)

Delmec Engineering

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

First Party

Appellant(s)

Delmec Engineering

Date of Site Inspection

1st August, 2017

Inspector

Kevin Moore

1.0 Site Location and Description

- 1.1. The site of the proposed development is located at Unit 10a at the north-western corner of the Barrowside Business Park on Sleaty Road in Graiguecullen to the north of Carlow Town. The site contains the structures as set out in the application and is enclosed by palisade fencing.

2.0 Proposed Development

- 2.1 The proposed development comprises the retention of a 36m high telecommunications support structure with an attached wind turbine and its associated antennae, link dishes, containers and cabinets.
- 2.2 Details submitted with the application included a covering letter explained the background to the development, the nature and extent of the proposal and the service provision associated with it.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. On 20th April, 2017, Carlow County Council decided to grant permission for the retention of the telecommunications support structure and ancillary development subject to 13 no. conditions. Condition no. 13 required a development contribution of €10,000.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The Planner noted the site's planning history, the reports received, development plan provisions and telecommunications guidelines. In relation to development contributions, it was stated that no contributions were received previously in respect of development on the site and that the contribution for a telecommunications mast is €10,000. A grant of permission was recommended subject to 13 no. conditions.

3.3.2. Other Technical Reports

The Area Engineer had no objection to the proposal.

The Roads Engineer had no objection to the proposal.

The Senior Executive Officer in the Environment Section recommended a grant of permission subject to conditions.

3.4. Prescribed Bodies

Irish Water had no objection to the proposal.

The Health Service Executive had no objection to the proposal.

4.0 Planning History

ABP Ref. PL 42.213869 (P.A. Ref. P.D. 5552)

Permission was granted by the Board for the construction of a 36 metre support structure carrying antennae and link dishes plus telecommunications equipment container for use as a base station installation. Condition no. 1 of the permission limited the life of the permission to five years unless further permission for retention was sought and granted for a further period prior to the end of the five-year life of the permission. Condition no. 12 required a development contribution in accordance with the Council's development contribution scheme.

P.A. Ref. PL. 11/6407

Permission was granted by the planning authority for the retention of a wind turbine on the telecommunications support structure. Condition no. 4 of that permission restricted the life of that development to five years from the date of the permission unless a further permission was granted.

The planning history set out in the Planner's report indicates that there was no further permission approved for the retention of the telecommunications structure and ancillary facilities to date.

4.1. **Carlow Town Development Plan 2012-2018**

Zoning

The site is zoned 'Retail warehousing'.

4.2. **Carlow County Council Development Contribution Scheme 2017-2021**

The rate of charge to be paid under the Scheme for telecommunications masts is €10,000 per mast.

5.0 **The Appeal**

5.1. **Grounds of Appeal**

The first party appeal relates to the attachment of Condition No. 13 of the planning authority's decision requiring the payment of a development contribution of €10,000. It is submitted that the Scheme has not been properly applied due to the fact the subject application was for retention of a previously granted and levied development on which a temporary permission was applied. It is further submitted that there is no specific aspect of the current scheme that allows for contributions to be levied on existing masts.

5.2 Specific grounds of appeal include:

- The subject site is in place for approximately 11 years and has been granted permission on 3 separate occasions – 05/5552 (PL 42.213869), 11/604 and the subject application.
- A development contribution was already paid under Planning Permission PL 42.213869 in 2006.
- The Carlow County Development Contribution Scheme does not allow for the imposition of development contributions on mast renewals. It simply allows for the implementation of such contributions on new developments, which the structure is not.
- Levying operators every five years for providing a public service is unsustainable.

- Precedents for similar cases include PL 03.238101, PL 21.241352, PL 20.242445, PL 16.241460, PL 16241939, PL 11.240855 and PL 26.245311.
- Circular PL07/12 recommends that levies are waived for the facilitation of broadband infrastructure. The facility will be enhanced in coming months to allow for 4G technology.

5.2. **Planning Authority Response**

The planning authority submits that Carlow County Council has no record of any contribution being paid by O2 Telecommunications who applied for Planning Permission PL 05/5552 or for Cinergy who applied for Planning Permission PL 11/6407. It is stated that, pending confirmation by way of receipt or such other correspondence from the Council confirming payment, the Council remains of the view that a contribution of €10,000 is applicable.

5.3. **Further Responses**

The applicant was requested by the Board to respond to the planning authority's submission and no response was received.

6.0 **Assessment**

- 6.1. The appeal relates solely to the proper application by the planning authority of the terms of its development contribution scheme adopted under section 48 of the Planning and Development Act. It is considered appropriate that the Board determines the appeal in relation to the disputed condition only (Condition 13 of the planning authority's decision) which relates to the financial contribution of €10,000 being sought by the planning authority. The provisions of section 48(10)(b) and (c) apply in this instance.
- 6.2. The original application was granted by the Board under Appeal Ref. PL 42.231869 and was subject to a condition (Condition 12) that required the payment of a contribution in accordance with the development contribution scheme at that time.

The application now before the Board seeks retention permission. It is reasonable to determine that the attachment of a financial contribution would be permissible in a retention permission such as in this instance where a previous contribution was required and was not made. Furthermore, such a condition would be appropriate under the current and previous development contribution schemes of the planning authority where no contribution has previously been made. Indeed, I note there is a direct relevant provision under the current development contribution scheme as follows:

“26. Retention Applications

Applications for retention will be charged at the full rate under the scheme.

Exemptions or reductions will not apply to retention applications.”

- 6.3 The decision of the planning authority on the current application was made at the time in which the 2017-2021 Development Contribution Scheme was in place and the contribution levied would be appropriate in accordance with this scheme, where a development contribution had not previously been made.
- 6.4 For clarification purposes, while the development may be in place for 11 years, there has been one permission granted for the telecommunications mast and associated development and one permission granted for the retention of the wind turbine only. The Board required a development contribution to be paid under Appeal Ref. PL 42.213869 relating to the telecommunications mast in accordance with Condition no. 12 of the permission issued. There was no development contribution required in accordance with the permission issued for the retention of the wind turbine.
- 6.5 The enhancement of the facility to allow for 4G technology is not the issue at hand, but rather the payment of a contribution for the mast in accordance with the Council's development contribution scheme.
- 6.6 The relevant matter for the Board is clearly whether a previous development contribution has been paid to the planning authority in accordance with the requirements of Condition no. 12 of the Board's previous decision. The appellant is correct in that repeated development contributions in respect of the same mast is unwarranted, notably in the absence of a particular provision that would give effect to such an additional payment and particularly where no material change to the development for retention arises. Furthermore, it is accepted that levying operators

every five years is an unsustainable position to hold in isolation of balanced provisions being in place to support such a position.

- 6.7 The planning authority has no record of the development contribution having been paid. The duty is on the applicant to supply information which confirms payment. The applicant has failed to demonstrate a previous development contribution was made in accordance with the requirements of the parent permission issued by the Board under Appeal Ref. PL 42.213869. The attachment of a condition in the current decision by the planning authority, requiring the provision of a development contribution, where there is no record of a previously required payment, appears appropriate and consistent by the planning authority.

7.0 Recommendation

- 7.1 I recommend the attachment of Condition No. 13 of the planning authority's decision in accordance with the following:

8.0 Decision

The Board considered, based upon the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had been properly applied in respect of condition number 13 and directs the said Council under subsection 10(b) of section 48 of the Planning and Development Act, 2000 to ATTACH the said condition and reason therefor.

9.0 Reasons and Considerations

Having regard to the nature of the development, which is a development subject to the provisions of Carlow County Council Development Contribution Scheme 2017-2021, and to the lack of confirmation of any previous development contribution having been made to the planning authority in accordance with the requirement of Condition 12 of Planning Permission PL 42.213869 (Planning Authority Ref. P.D. 5552), it is considered that the terms of the development contribution scheme have

been properly applied and a development contribution condition should be included in this instance.

Kevin Moore
Senior Planning Inspector

28th August 2017