



An  
Bord  
Pleanála

## Inspector's Report PL11.248630.

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<b>Development</b>	Permission for retention of 24m high telecommunications structure carrying antennae, link dishes, cabinets, concrete plinths, fencing and access route.
<b>Location</b>	Springfield, Ballycolla, Co Laois.
<b>Planning Authority</b>	Laois County Council.
<b>Planning Authority Reg. Ref.</b>	17/149
<b>Applicant(s)</b>	Shared Access Ltd
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission subject to conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Shared Access Ltd
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	N/A.
<b>Inspector</b>	Brid Maxwell.

## 1.0 Site Location and Description

- 1.1. The appeal site which has a stated area of 0.1 hectares is located on agricultural land within a rural area approximately .6km to the southwest of the M7 / M8 junction within the townland of Springfield, Ballycolla, Co Laois. The established telecommunications site comprises 3 no 2m high panel antennas mounted on a 24m high steel mast which comprises a triangular section lattice tower.

## 2.0 Proposed Development

- 2.1. The proposal involves retention permission for an existing 24m high multi user telecommunications structure, carrying associated antennae and link dishes, existing cabinets, existing concrete plinths, existing security fencing and access route.

The telecommunications site has been in existence since 2011 and the application details indicate that the site provides coverage and co-location facilities for H3GI, Three Ireland and Vodafone. The retention of this site is it is contended vital to enable three Ireland and Vodafone continue to provide high quality 3G and 4G broadband services.

## 3.0 Planning Authority Decision

- 3.1 *The Planning Authority decided to grant permission and 6 conditions were attached including condition 6:*

*“Upon receipt of the grant of this order, the developer shall pay the sum of €15,000 to Laois County Council, in accordance with the Council’s Development Contribution Scheme 2013-2017, in respect of public infrastructure and facilities benefitting development in the area of the planning authority, and that is provided or that is intended will be provided by, or on behalf of, the Council.*

*The amount of the development contribution is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and penalty interest for late payment, in accordance with the terms of the Council’s Development Contribution Scheme.*

*Reason: It is considered reasonable that the developer should contribute towards expenditure incurred or proposed to be incurred by Laois County Council in respect of the provision /improvement of public services / infrastructure benefitting development in the area of the Planning Authority.*

## **3.2 Planning Authority Reports**

3.2.1 Executive Planner's reports notes that the structure has a limited impact on views from the surrounding road network and outlines that development contributions were previously paid in respect of 11/422.

3.2.2 Addendum to the Executive Planner's report by Acting Senior Executive Planner recommends the insertion of development contribution condition for the amount of €15,000. This is recommended on the basis that the application is for retention permission and there is no exemption from development contribution where the application is for retention.

3.2.3 Note by Senior Planner comments that levies were paid with respect to 11/422 and are therefore not relevant at this time.

### **3.2.4 Other Technical Reports**

Area Engineer indicates no objection.

## **3.3 Prescribed Bodies**

3.2.1 Transport Infrastructure Ireland asserts that it has no observations to make on the application.

## **4 Planning History**

**14/162** Retention permission for the attachment of 3 no panel antennae to an existing 24m high telecommunications structure granted under Planning ref 11/422, equipment cabinet at ground level and associated works and permission for the

attachment of 2 no radio link dishes to the existing 24m high telecommunications structure previously granted under planning reference 11/422. Conditional permission granted 20/8/2014 subject to 6 conditions.

**11/422** Permission to construct a 24m high telecommunications support structure including 1 no gantry pole, 3 no telecommunications antenna, 2 no link dishes, 1 no rfe cabinet and 2 no associated operator cabinets, all located within a 2.4m high palisade fenced compound with landscaping and a 190m long access track and all associated site works. 10 conditions were attached including condition 2 restricting development to a period of 5 years and condition 9 requiring payment of a development contribution of €14,591 in accordance with the Development Contribution Scheme. Condition 10 required the lodgement of a bond of €10,000 to secure the removal of the mast.

## **5 Policy Context**

### **5.1 Development Plan**

At the time of its decision the Laois County Development Plan 2011-2017 was the statutory plan.

#### **Chapter 9 Energy and Telecommunications**

*It is the Policy of the Council ET 9 / P30 to Provide orderly development of telecommunications infrastructure throughout the County in accordance with the requirements of "Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities" July 1996.*

*ET 9 / P31 Encourage coverage and capacity of mobile phone network infrastructure, while striving to reduce the number of telecommunications structures, by ensuring that ComReg's Code of Practice on Site Sharing is implemented and reciprocal national roaming is entered into;*

*ET 9 / P32 Encourage co-location of antennae on existing support structures and to require documentary evidence as to the non availability of this option in proposals for new structures. The shared use of existing structures will be insisted upon where there are a number of masts located in any single area;*

*ET 9 / P33 Secure a high quality of design of masts, towers and antennae and other such infrastructure in the interests of visual amenity and the protection of sensitive landscapes, subject to radio and engineering parameters.*

Development control standards. DCS 59

Telecommunications: To facilitate the evaluation of development proposals for the erection of antennae and support structures, applicants/developers/operators will be required to:

submit a reasoned justification as to the need for the particular development at the proposed location in the context of the operators overall Plans to develop a network in County Laois ;

indicate what other sites or locations in the County were considered;

submit evidence of consultations, if any, with other operators with regard to the sharing of sites and/or support structures;

submit proposals to mitigate the visual impact of the proposed development including the construction of access roads, additional poles and structures, and; furnish a statement of compliance with the International Radiation Protection Association (IRPA) Guidelines (Health Physics, Vol. 54, No. 1(Jan) 1988) or the equivalent European Pre standard 50166-2 which has been conditioned by the licensing arrangements with the Department of Transport, Energy and Communications and to furnish evidence that an installation of the type applied for complies with the above Guidelines.

5.2 The **Laois County Council Development Contribution Scheme 2013-2017** was adopted on 21 October 2013. (copy attached in file pouch). The rate for Telecommunication Masts is €15,000 per mast.

At 6.5 Exemptions and reductions it is states as follows:

*“Telecommunications / Broadband infrastructure (masts and antennae). “Where a general development contribution has been paid for telecommunications apparatus on foot of a 5-year permission (as recommended by 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.”*

5.3 The Laois County Development Plan 2017-2023 adopted on 26<sup>th</sup> June 2017 and effective from 24<sup>th</sup> July 2017 subsequent to the Council’s decision mirrors previous policies in relation to the delivery of high capacity telecommunications infrastructure at appropriate locations. TELE 5 and TELE 11 the promotion and facilitation of co-location and sharing of facilities.

#### **5.4 National Policy**

##### **5.4.1 Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities, 1996:**

These guidelines detail the various technical and other criteria to be considered in the assessment of applications for telecommunications apparatus. They provide details of the technical specifications of such apparatus in addition to advising on suitable locational options.

5.4.2 **Circular Letter PL07/12 from the Department of Environment Community and Local Government dated 19th October 2012** issued under Section 28 of the Planning and Development Acts 2000-2012 to update certain sections of the Telecommunications Antennae and Support Structure Guidelines 1996. Elements of the 1996 guidelines which were revised include the cessation of temporary permissions. 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 permission issue with conditions limiting their life.

Circular letter PL07/12 further recommends that the lodgement of a bond or cash deposit with the local authority to effect removal in the case of obsolescence is generally not required.

On the issue of health and safety aspects, planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matter in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process.

#### **5.4.3 Development Contributions, Guidelines for Planning Authorities, Department of the Environment, Community and Local Government. January 2013.**

The guidelines provide non statutory guidance on the drawing up of development contributions schemes. They require that subject to the overriding principles of proper planning and sustainable development, adopted development contribution schemes should contribute to the promotion of sustainable development patterns, economic activity and to securing investment in capital infrastructure and economic activity. They should reflect the reduced costs of infrastructure provision in recent years relative to when schemes were last revised. Planning Authorities are required to include within their schemes waivers for broadband infrastructure (masts and antennae). In relation to Double charging, the guidelines note 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 has already made a contribution.

#### **5.5 Natural Heritage Designations**

The site is c4km from the River Barrow and Nore cSAC.

## **6 The Appeal**

### **6.1 Grounds of Appeal**

The appeal is submitted by 4 site on behalf of Shared Access Ltd. The appeal relates solely to condition 6 in relation to the application of the terms of the Development Contribution Scheme and grounds are summarised as follows:

- Governing permission 11/422 included condition 9 a development contribution of €14,591 duly paid in full. It is unreasonable to impose a further contribution.
- Council has disregarded its own scheme and Department of Environment Ministerial Guidelines 2013.
- In accordance with Development Contribution Scheme 2017 where a development contribution has been paid on foot of 5-year permission contributions will not be payable on any subsequent permission save where the structure is being materially altered.
- Masts antennae dish and other communications structures which form part of the broadband scheme as defined by the Department of Communications Energy and Natural Resources will receive a 100% reduction in development contributions.
- Department of the Environment Guidelines Development Contributions – Guidelines for Planning Authorities January 2013 note at Section 2 Double charging is inconsistent with both the primary objective of levying development contributions and the spirit of capturing planning gain in an equitable manner.
- Precedent cases PL11.246838, PL11.240686, PL19.238292, PL20.239245 and PL24.240635 where the Board decided that where a development contribution has already been paid, contributions will not be payable on any subsequent structure.

### **6.2 Planning Authority Response**

The Planning Authority did not respond to the appeal.



## 7 Assessment

7.1 As this is a first party appeal against a financial contribution condition applied under Laois County Council Development Contribution Scheme 2013-2017 the provisions of Section 48 of the Planning and Development Act 2000 as amended apply and the Board cannot consider the proposed development de novo. The Board's remit in appeals against financial contribution conditions is restricted to the proper application of the adopted scheme. This scheme was adopted on the 21<sup>st</sup> October 2013 and was made under Section 48 of the 2000 Act.

7.2 Condition 6 under appeal is as follows:

*“Upon receipt of the grant of this order, the developer shall pay the sum of €15,000 to Laois County Council, in accordance with the Council’s Development Contribution Scheme 2013-2017, in respect of public infrastructure and facilities benefitting development in the area of the planning authority, and that is provided or that is intended will be provided by, or on behalf of, the Council.*

*The amount of the development contribution is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and penalty interest for late payment, in accordance with the terms of the Council’s Development Contribution Scheme.*

*Reason: It is considered reasonable that the developer should contribute towards expenditure incurred or proposed to be incurred by Laois County Council in respect of the provision /improvement of public services / infrastructure benefitting development in the area of the Planning Authority.*

7.3 The first party contends that the contribution sought is unreasonable in that levies were paid under the parent permission 11/422 and that this permission was for a temporary period. Reference is made to Section 6.5 of the adopted scheme which relates to Exemptions and Reductions and provides that

*“Telecommunications / Broadband infrastructure (masts and antennae). “Where a general development contribution has been paid for telecommunications apparatus*

*on foot of a 5-year permission (as recommended by 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.”*

7.4 The imposition of a general contribution arose following recommendation of the senior executive planner of Laois County Council in reference to the **exclusions** from exemption and reduction for retention permission. However, I note that this exclusion refers only to Special Development Contributions. Reference is also made to two previous appeal cases where the Board found that development contributions should apply in respect of continuance of use of an existing mobile phone mast. I note in relation to PL11.243720 (14/161) the Board concluded that the exclusion provided for exemptions and reductions did not apply to the particular circumstances in that case. In relation to PL11.244705 13/347 the Inspector noted that whilst the exemption and reduction in relation to telecommunications broadband infrastructure would apply in respect of a general development contribution previously paid however this did not arise in this particular case as no contribution was imposed on the governing permission. I note from the Planning report that there was not consensus in terms of the imposition of the development contribution condition as both the Executive Planner and Senior Planner recommended that as levies were previously paid they should not now apply.

7.5 I consider that the contribution scheme is clear in its statement that where a general development contribution has been paid for a telecommunications apparatus on foot of a 5-year permission contributions will not be payable on any subsequent applications for the same structure, unless the existing structure is to be materially altered. This is consistent with the recommendations of Development Contributions, Guidelines for Planning Authorities, Department of the Environment, Community and Local Government. January 2013 in relation to double charging where the guidelines note

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. On this basis I recommend the removal of condition 6.

## **7.6 CONCLUSIONS AND RECOMMENDATION**

7.6.1 Having reviewed the application documents, the grounds of appeal and the planning authority’s development contribution scheme I consider that the terms of the Development Contribution Scheme have been improperly applied in respect of contributions payable in relation to the proposed development. In the light of the above assessment, I recommend that the Board should direct the Council to remove said condition 6.

### **REASONS AND CONSIDERATIONS**

The proposed development is for the continuance of use of an existing telecommunications mast and mobile phone infrastructure. Having regard to the parent permission granted under planning register reference number 11/422 which included a condition for a financial contribution under the Development Contribution Scheme and which was 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.

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Brid Maxwell  
Planning Inspector

11<sup>th</sup> September 2017