



An
Bord
Pleanála

Inspector's Report PL11.248643

| | |
|-------------------------------------|--|
| Development | Retention of 20m high floodlight/telecommunications pole, plinths, cabinets, fencing and permission for replacement antennae and dishes. |
| Location | The Heath GAA Club, Co. Laois |
| Planning Authority | Laois County Council. |
| Planning Authority Reg. Ref. | 17/150. |
| Applicant(s) | Shared Access Ltd. |
| Type of Application | Retention Permission. |
| Planning Authority Decision | Grant permission with conditions. |
| Appellant(s) | Shared Access Ltd. |
| Observer(s) | None. |
| Date of Site Inspection | None. |
| Inspector | Ciara Kellett. |

1.0 Site Location and Description

1.1. The appeal site is located on lands at the Heath GAA club, The Heath, Portlaoise, Co. Laois. The Heath GAA club is located c.6.5km north-east of Portlaoise and c.50m south-east of the M7 motorway. The Heath golf club is located to the south and east of the GAA club. No site visit has been undertaken because this is an appeal against a condition only.

2.0 Proposed Development

It is proposed to retain an existing 20m high dual use floodlight and telecommunications support pole, existing plinths, associated works, cabinets and security fencing, and permission for replacement antennae and dishes granted as per previous planning permission Reg. Ref. PL11/433 at The Heath GAA Club. It is stated that the development will continue to form part of H3G Ireland's 3G Broadband telecommunications networks. The development incorporates 4 no. floodlights at 14m high.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a decision to **grant permission** subject to 7 conditions. Condition no.7 is relevant to this appeal. It states:

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 it is intended will be provided by, or on behalf of, the Council.

The amount of the development contribution is set out above and 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 the 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

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Notes that the previous permission Reg. Ref. 11/433 expired on January 29th 2017 (plus 45 days as per Section 252 of the Planning and Development Act) and therefore requires retention permission.
- Reference made to the revised Telecommunications Antennas and Support Structure Guidelines (2012) issued by the Department of Housing, Planning and Local Government state permanent permissions should be granted, unless exceptional circumstances warrant granting of a temporary permission and in light of this, considers the grant of permanent permission is appropriate subject to conditions.
- Considers that it is not appropriate to require the imposition of a bond in accordance with Circular Letter PL07/12.
- Having regard to policies ET9/P30-36 and Development Control Standard DCS59 of the Laois County Development Plan 2011 – 2017, and proposals of the National Development Plan, recommends that permission should be granted.
- The decision was in accordance with the Planning Recommendations.

3.2.1. Other Technical Reports

None recorded on file.

3.3. Third Party Observations

None recorded on file.

4.0 Planning History

4.1. There are a number of planning permissions pertaining to the development of the Heath GAA club. There is one planning permission with respect to the subject structure:

- Reg. Ref. 11/433: Permission granted in January 2012 to erect a 20m high pole, floodlights at 14m for training purposes, telecommunications antennae and link dishes. The application also sought retention permission for 8 no. 16m high floodlights. Permission was subject to 13 conditions. Condition no.2 permitted the development for 5 years and condition no.9 required a Development Contribution of €14,591.

5.0 Policy Context

5.1. Laois County Development Plan 2017 – 2023

The new Laois County Development Plan 2017 – 2023 came into effect in July 2017.

Chapter 6 of the Development Plan refers to Infrastructure with Section 6.6 referring specifically to Energy and Telecommunications. Section 6.6.5.2 specifically deals with *Telecommunications Masts and Antennae*. The Development Plan refers to the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities” document, published by the Department of the Environment in 1996.

Policies TELE5 – TELE13 refer to telecommunications policies. **Policy TELE12** states:

Demonstrate compliance with the requirements of the DOECLG Guidelines on “Telecommunications Antennae and Support Structures (1996) and the

Circular Letter of 2012 (PI07/12) (as may be amended) and other publications and material as may be relevant.

5.2. **Development Contribution Scheme**

The Draft Development Contribution Scheme 2017 – 2023 was available for public consultation from 4th July 2017 to 16th August 2017.

The Draft Development Contribution Scheme 2017 – 2023 states with respect to Telecommunications in Section 12.9:

Development consisting of masts and antennae, dish and other apparatus/equipment for communication purposes which form part of the National Broadband Scheme (NBS) or a subsequent Government endorsed initiative as defined by the Department of Communication, Energy and Natural Resources (DCENR). Where a general development contribution has been paid for telecommunications apparatus on foot of a 5 year permission (as recommended by the DoEHLG Guidelines of Telecommunications 1996), contributions will not be payable on any subsequent applications for the same structure, unless the existing structure is to be materially altered.

The current Laois County Council Development Contribution Scheme was adopted on 21st October 2013. It is noted that the scheme has been reviewed in line with the “Development Contributions Guidelines for Planning Authorities” published by the Department of the Environment, Community and Local Government in January 2013. Section 6.5 of their scheme refers to *Exemptions and Reductions*. It states “*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 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*”.

5.3. Guidelines

The aim of the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities” is to offer general guidance on planning issues so that the environmental impact is minimised, and a consistent approach is adopted by the various planning authorities. Circular Letter PL 07/12, issued in October 2012 by the Minister for the Environment, Community and Local Government under section 28 of the Planning and Development Acts 2000-2012, updated certain sections of the Guidelines and states, inter alia, 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 “Development Contributions Guidelines for Planning Authorities” published by the Department of the Environment, Community and Local Government in January 2013, require planning authorities in reviewing their development contributions schemes to include waivers for broadband infrastructure (masts and antennae). The Guidelines further state 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”*.

5.4. Natural Heritage Designations

There are no designated sites within the vicinity. The River Barrow and River Nore SAC (site code 002162) is c. 7km away.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against condition no.7 only, has been submitted by 4Site, on behalf of Shared Access Ltd. Condition no.7 requires the payment of Development Contribution of €15,000. The appeal has been lodged under Section 48(10)(b) of the Planning and Development Act.

The grounds of appeal can be summarised as follows:

- The original planning permission was granted in December 2012 which included a condition to pay a Development Contribution of €14,591. The applicant provides proof of payment as part of the appeal.
- As the development contributions were paid in full the applicant objects to the Council attaching a further contribution condition.
- Refers to the current Laois Development Contribution Scheme 2013 – 2017, which states in Section 6.5 Exemptions and Reductions “*Telecommunications / Broadband infrastructure (masts and antennae) – Where a general development contribution has been paid for telecommunication apparatus on foot of a 5 year permission (as recommended by DoEHLG Guidelines on Telecommunications 1996) contributions will not be payable on any subsequent application for the same structure, unless the existing structure is to be materially altered.*” States no alteration has taken place and the structure being retained is the same as that granted under P11/433.
- Reference is made to the Department of Environment, Community and Local Government “Development Contributions Guidelines for Planning Authorities” 2013 publication, which requires that waivers for broadband infrastructure from Development Contributions, must be included in Council’s Development Contribution Schemes.
- Refers to the Guidelines note in Section 2 which states that the practice of double charging is inconsistent with both the primary objective of levying

development contributions and with the spirit of “planning gain” in an equitable manner.

- Considers that Laois County Council have disregarded their own scheme. Notes that the Scheme includes an “exclusion” where no exemptions or reductions will apply to (d) Retention Permissions. An Bord Pleanála has already set a precedent with the decision PL11.246838, whereby the overriding provision was to be “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”.
- The attempt to impose additional contributions on a Retention Application does not appear to be in keeping with the Laois Development Contribution Scheme given that it does not clearly indicate that such contributions are applicable to Retention Applications for existing telecommunication structures/masts.
- Reference is made to other An Bord Pleanála decisions where the Board has previously overturned imposition of additional contributions. Specific reference is made to Board decisions PL11.240686, PL19.238292, PL20.239245, and PL24.240635.

6.2. Planning Authority Response

The Planning Authority responded to the grounds of the appeal by stating that the condition is included in accordance with the development contribution operated by the Council. In item J, telecommunication masts of the type proposed for retention are subject to a charge of €15,000.

It is further submitted that Section 6.5 of their Development Contribution Scheme, under the heading *Exemptions and Reductions*, states that no exemption or reduction will apply to (d) Retention Permission. It is considered that as this is part retention application, the Council consider that the contribution of €15,000 was correctly charged.

6.3. Further Responses

The applicant was provided an opportunity to respond to the Planning Authority submission. The applicant states that there is no justification for this request having previously paid €14,591. They consider clarity on direction on the Laois County Council requests, or interpretation of guidelines, from the Department of the Environment is urgently required. The current Laois County Council Development Contribution Scheme 2013, does not provide for a specific provision stating that the retention of an existing authorised telecommunications mast will be subject to a further contribution. Reference is made to precedents again.

6.4. Observations

None

7.0 Assessment

- 7.1. The first party has appealed Condition no.7 only. Condition no.7 requires the developer to pay a Development Contribution of €15,000 to the Planning Authority. The first party has appealed the condition under Section 48(10)(b) of the Planning and Development Act 2000, as amended. Section 48(10)(c) of the Planning and Development Act 2000, states that where an appeal is brought in accordance with Section 48(10)(b) and no other appeal of the decision is brought by any other person, the authority may make the grant of permission as soon as may be, after the expiration of the period for making an appeal. The appeal is therefore confined to the consideration of whether or not the terms of the Laois County Council Development Contribution Scheme 2013 – 2017 were properly applied in this instance.
- 7.2. This is a request for retention permission - for the 20m high telecommunications structure, and associated equipment and fencing. Permission is sought to replace the antennae and dishes but no material changes are proposed to that originally granted permission in Reg. Ref. 11/433.

7.3. The Laois County Council Development Contribution Scheme was adopted on the 21st October 2013. It states that the scheme has been reviewed in line with the “Development Contributions Guidelines for Planning Authorities” published by the Department of the Environment, Community and Local Government in January 2013. Section 6.5 of the Scheme refers to Exemptions and Reductions:

“Telecommunications / Broadband infrastructure (masts and antennae) – Where a general development contribution has been paid for telecommunication apparatus on foot of a 5 year permission (as recommended by DoEHLG Guidelines on Telecommunications 1996) contributions will not be payable on any subsequent application for the same structure, unless the existing structure is to be materially altered.” There is a clear exemption for telecommunication infrastructure listed in the Scheme where a previous contribution has been paid, as is the case in the subject appeal.

7.4. Having regard to the current proposal there would appear to be no material alterations to the structure, nor is there intensification proposed which would imply that contributions will not be payable on any subsequent application.

7.5. The appellant refers to case PL11.246838, whereby the Board considered that the specific provision contained within the Development Contribution Scheme in respect of Telecommunication masts, was not negated by reference to the more general provision contained within the scheme in respect of retention planning permissions. Having regard to this, it is clear that the waiver should apply and there should be no “double charging”.

7.6. I have reviewed the cases referred to by the Appellant.

- PL20.239245 – This was for retention of a mast in Roscommon County Council area. A Development Contribution was paid on a permission granted in 2006, and in 2011 a further grant of permission was permitted with a condition to pay another contribution. The Board decided to omit the condition because it was considered that the Development Contribution Scheme did not

provide for the payment of repeated contributions in respect of the same development.

- PL19.238292 – This was an appeal against a Development Contribution on foot of an application for retention of a mast following an earlier grant for 5 years in 2005. The application was lodged with Offaly County Council in 2010. The Board decided to omit the condition because it was considered that the Development Contribution Scheme did not provide for the payment of repeated contributions in respect of the same development.
- PL24.240635 – Similar to the two cases above, the applicant lodged a planning application in 2012 with Waterford County Council following an original grant for 5 years in 2007. The Board decided it would be an unreasonable interpretation of the Development Contribution Scheme to require a further contribution.
- PL24.240686 – The original permission was refused permission by Laois County Council in 2006 and subsequently granted by the Board in March 2007. The Council stated in the appeal against the financial contribution of the 2012 application, that the original permission had lapsed. The Board considered that it would be an unreasonable interpretation of the Development Contribution Scheme to require further contribution in this case.

7.7. Having regard to the Council's Development Contribution Scheme which provides for an exemption for Telecommunications Masts where contributions were previously paid, I am satisfied that the Condition no.7 should be removed.

7.8. **Appropriate Assessment**

Having regard to the nature and scale of development proposed, namely the retention of development, and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed

development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that the Board directs the Council under Section 48 of the Planning and Development Act 2000, as amended, to REMOVE Condition no.7.

9.0 Reasons and Considerations

Having regard to the fact that in the case of the current appeal a financial contribution has already been paid and there is no proposal to materially alter the structure, 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.

Ciara Kellett
Senior Planning Inspector

12th September 2017