



An
Bord
Pleanála

Inspector's Report PL18.248750

Development	Retention of a 24 metre telecommunications support structure
Location	Tonyclea Td., Scotstown, Co. Monaghan
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	16/457
Applicant(s)	Vodafone Ireland Limited
Type of Application	Permission
Planning Authority Decision	GRANT
Type of Appeal	First Party
Appellant(s)	Vodafone Ireland Limited
Observer(s)	None
Date of Site Inspection	14 th September 2017
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site comprises a telecommunications compound and access track, with a stated site area of 0.037 ha and is located in the townland of Tonyclea, c. 6.5km north west of Tydavnet, Co. Monaghan. The telecommunications support structure is a 24 metre high steel lattice structure supporting a variety of antennae and dishes. The compound also includes a number of equipment cabins and is surrounded by a c. 2.4 metre high palisade fence. The appeal site is located within, and surrounded by, mature conifer plantations.

2.0 Proposed Development

- 2.1. The description of the proposed development, as amended following a request for further information, is as follows: retention permission for a 24m telecommunications support structure (with headframe carrying equipment giving overall height of 26.6m); associated 4 No. antennae and 5 No. link dishes; associated equipment cabins and cabinet; security fencing around the site; and an access track (as per planning ref. 10/120), including retention permission for additional 2 No. Remote Radio Units, 3 No. 1.2m dishes, 2 No. flat panel antennas, 4 No. 0.3m dishes, 1 No. 0.6m dish added to existing mast and associated cabinet in compound post planning grant 10/120.
- 2.2. It is stated that the development to be retained forms part of Vodafone Ireland Limited's existing GSM and 3G broadband telecommunications network.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission and Condition 1 which forms the subject of this appeal states:

- a. The developer shall pay to Monaghan County Council a sum of €62,160.00 in accordance with the General Development Contribution Scheme 2013-2019 (as revised), made by the Council under Section 48 of the Planning and Development Act 2000 (as amended), towards expenditure incurred or proposed to be incurred by the Council in the provision of community, recreation and amenity public infrastructure and facilities in the area.
- b. The sum attached to this condition shall be revised from the date of the grant of planning permission to the value pertaining at the time of payment in accordance with the Wholesale Price Index for Building and Construction (Materials and Wages).
- c. The development contribution shall be paid in full within six months of the date of planning permission hereby granted, or in accordance with a schedule of phased payments agreed in writing by Monaghan County Council within six months of the date of planning permission hereby granted.

Reason: It is considered appropriate that the developer should contribute towards the expenditure incurred or proposed to be incurred by the Council in the provision of community, recreation and amenity infrastructure and facilities, which will facilitate the proposed development.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's report can be summarised as follows:

- The development is not visible from beyond the immediate access track and there are no concerns with respect to the most detrimentally affecting the visual amenity of the area.

- The retention of the site will continue to act as a strategic location as a link from a number of neighbouring base station sites to the main network switch site.
- Previous Board decisions have stated that sight distances should not be considered for such development types given the minimal vehicular movements associated with same. No objections to established access arrangements.
- No sites of archaeological interest/protected structures within 100m.
- Site accommodates Vodafone and two other operators and will be available for co-location, in accordance with Guidelines.
- Having regard to circular letter PL/07/12 it is not considered necessary to request any health and safety documentation.
- Development complies with relevant Policies of Development Plan.
- Site is within an area of Primary Amenity Value and Policy TEP 7 states that masts shall not generally be permitted in such areas. The sensitive location of the site is noted but it is well screened with limited views in the wider landscape.
- Height of support structure and number of antennae/dishes differs from that granted under Reg. Ref. 10/120. Additional equipment identified in response to RFI will be subject to development contributions.
- Access track is within the Slieve Beagh SPA, but mast is no longer within the SPA. By virtue of the nature of the proposed development and the distance of the site from the Natura 2000 site there will not be any significant effects on its integrity. There are no significant watercourses in close proximity to the site

and no pathway connectors with the Natura 2000 network. Stage 2 AA is not required.

3.3. Other Technical Reports

- **Environment Section:** No objection, subject to conditions.

3.4. Third Party Observations

3.4.1. Three third party observations were received by the Planning Authority. The issues raised can be summarised as follows:

- Health risks to persons living in close proximity to these types of structures.
- Impact on flora and fauna due to radiation emissions from the site.
- Visual impact of structure.

4.0 Planning History

4.1. The following planning applications relate to the appeal site:

- **Reg. Ref. 10/120:** Consist of an existing 26.4m high telecommunications support structure, with antennas, equipment container, and associated equipment within a fenced compound and access track:
 - **C1:** Development contribution of €30,080.
 - **C2:** Permission for a period of five years.
 - **C4:** Transmitter power output, antennae type and mounting configuration shall be in accordance with details submitted and shall not be altered with a prior grant of planning permission.

- **Reg. Ref. 05/397:** A telecommunications support structure with 4 No. 1.9 metre high panel antenna, 4 No. 0.6 metres diameter link dishes and 1 No. 0.3 metre diameter link dish erected on the structure total structure height 26.4 metres; 2 No. associated containerized equipment shelter measuring approx. 7.6m² and 7.4m²; a 2.4 metre high security fence and access gate track and all associated site development works.
- **Reg. Ref. 99/491:** Erect a 26m telecommunications support structure and antennae, associated containerised equipment shelter, access road and security fence.

5.0 Policy Context

5.1. Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, 1996

5.1.1. These Guidelines set out the criteria for the assessment of telecommunications structures. Relevant points from the Guidelines are summarised below.

- An authority should indicate any locations where telecommunications installations would not be favoured or where special conditions would apply. Such locations might include high amenity lands or sites beside schools. (Section 3.2).
- In rural areas towers and masts can be placed in forestry plantations provided of course that the antennae are clear of obstructions. This will involve clearing of the site but in the overall will reduce visual intrusion. (Section 4.3).
- The sharing of installations and clustering of antennae is encouraged as co-location will reduce the visual impact on the landscape. (Section 4.5).

- Permissions should normally be granted for five years. Retention of the base stations at the end of the five year period would then be conditional on the replacement of obsolescent technology with more modern, environment friendly designs where these have become available. (Section 4.8).

5.2. **Circular Letter PL07/12**

5.2.1. This Circular Letter revises elements of the 1996 Guidelines. In particular, Section 2.2 advises Planning Authorities to cease attaching time limiting conditions to telecommunications masts, except in exceptional circumstances. Section 3 relates to development contributions and notes that the 1996 Guidelines pre-dated the introduction of Development Contribution Schemes. It goes on to state that the then draft Development Contribution Guidelines for Planning Authorities requires 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.

5.3. **Development Contributions Guidelines for Planning Authorities, 2013**

5.3.1. Section 2 is entitled 'supporting economic development', and relevant elements of this section include:

- Planning authorities are required to include waivers for broadband infrastructure (masts and antennae) in their development contribution schemes.
- 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 applications.
- 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. Monaghan County Development Plan 2013-2019

5.4.1. Section 6.6 of the County Development Plan relates to telecommunications. The CDP notes the importance of high speed telecommunications to the economic growth of the County and contains a number of specific Objectives, TEO 1 to TEO 5 in relation to telecommunications developments. Section 15 of the Development Plan also sets out specific policies, TEP 1 to TEP 9, in relation to telecommunications developments.

5.5. Monaghan County Council General Development Contributions Scheme 2013-2019, as amended

5.5.1. Section 19(e) states:

- 100% exemption from all development contribution charges in relation to telecommunications development which is solely for the provision of broadband infrastructure where the new development does not place a demand for new, upgraded or additional infrastructure or services.

5.5.2. Section 18 states that the exemptions/reductions set out in Section 19 will not be applicable in respect of permissions for retention of development.

5.5.3. Appendix 3 sets out the levels of general development contributions for various categories of development. Class (m) relates to telecommunications and indicates the amount of contribution as follows:

- €10,000 per Mast
- €5,000 per Antenna installed on existing mast

5.5.4. Section 21 makes provision for these rates of contribution to be adjusted in accordance with changes to the Wholesale Price Index for Building and Construction published by the Central Statistics Office. The current rate of contribution, as per the Planning Authority's calculation sheet is:

- €10,330 per Mast
- €5,180 per Antenna installed on existing mast

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal is a first party appeal, seeking the removal of Condition 1 of the planning authority's decision which requires the payment of a development contribution. The issues raised in the appeal can be summarised as follows:

- Implementation Programme on Mobile Phone and Broadband Access states that the requirement for the payment of development contributions for telecommunications infrastructure will cease in every Local Authority area from early 2017. Notwithstanding this national policy, the applicant understands that the Board is restricted with regard to its assessment.
- 12 pieces of additional equipment have been added to the mast following the grant of retention permission in 2010 (Reg. Reg. 10/120). This comprises 2 Remote Radio Units (RRUs) and 10 dishes.
- The DCS includes a contribution per antenna. The additional equipment attached to the support structure are not antennae.

- An RRU generates and processes radio frequencies. The relationship between an antenna and a RRU is like that between a speaker and an amplifier: the antenna is the speaker and the RRU is the amplifier. An RRU reduces the losses which occur through long runs of coaxial cable from the antenna to the cabinets at the base of the tower and improve performance and coverage. They serve no function in the absence of an antenna.
- Diplexers combine two separate RF inputs into one output. A diplexer serves no function in the absence of an antenna.
- In ABP case PL23.242463 the Inspector acknowledged that RRUs and other supporting apparatus are not antenna and recommended that charges for RRUs and other apparatus should be removed on the grounds that the exemptions/reductions for mobile broadband would be applicable.
- While DCS states that exemptions/reductions do not apply to retention permission, the RRUs are a part of the base station equipment and not antenna. The RRUs added since 2010 are part of the previously permitted and levied equipment and should not be levied again.
- With regard to the 10 transmission dishes, the Board has not included these as antenna in the calculation of development contributions for other cases in Monaghan (Ref. PL18.246408, PL18.242962, PL18.246407).
- €30,560 was previously paid by the applicant to MCC for the previous retention permission and a second levy should not apply in accordance with the Development Contributions Guidelines for Planning Authorities or relevant Board precedents including PL18.242750, PL21.241352 and PL26.245312.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- As per s. 48(10)(b) of the PDA, the merits of the terms of the scheme or the amount applied to types of development are not matters for consideration in this appeal.
- All planning permissions are subject to specified development contributions in accordance with the DCS, which includes a category specific to telecommunications.
- MCC has incorporated a waiver in respect of development solely for broadband within its DCS and the relevant Departments have confirmed that MCC is one of the local authorities that has ceased applying charges for broadband infrastructure. Charges can still be levied on development that is not solely for broadband provision.
- Regardless of the above, no waivers apply in respect of applications for retention permission.
- MCC is now satisfied that RRUs and diplexers are not antennae and not subject to development contributions. The development contributions can therefore be reduced by €10,360 (€5,180 x 2), to a total of €51,800.
- Appeal implies that transmission dishes are not antennae. This is incorrect. They are parabolic antennae and liable to be levied in the same way as panel antennae.
- Double charging has not occurred. No development contribution was levied for permitted infrastructure, only for the additional 10 antennae over those previously permitted.
- Appellant's references to other appeals are not comparable or relevant, as they relate to cases where no additional antennae were being installed. An intensification of use has taken place and the imposition of development

contributions for the additional antenna is in keeping with the terms of the DCS.

- MCC requests that a development contribution of €51,800 be imposed.

6.3. Appellant's Response to Planning Authority Response

6.3.1. The appellant's response to the Planning Authority's response can be summarised as follows:

- Class 31 exemptions provide for the attachment of equipment to existing support structures.
- Monaghan County Council seek detailed development descriptions with regard to the amount and detail of equipment on support structures. The purpose of this is unclear considering the exemptions and the fact that there is no condition limiting the attachment of equipment.
- The transmission dishes should not be subject to development contributions as they were installed under the Class 31 exemption and are only included in the planning application due to the parent permission for the support structure being temporary.
- It is unreasonable to charge for development which is permitted under the exempted development provisions.

6.4. Observations

6.4.1. None received.

7.0 Assessment

7.1. Nature of Appeal

- 7.1.1. Section 48(10)(b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.
- 7.1.2. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal, which is whether the terms of the Scheme have been properly applied.

7.2. Application of Development Contribution Scheme

- 7.2.1. Condition 1 requires the developer to pay €62,160 to Monaghan County Council as a development contribution in accordance with the General Development Contribution Scheme 2013-2019. The applicant is seeking the removal of this condition.
- 7.2.2. The Planning Authority in their response to the appeal have accepted the applicant's assertion that the Remote Radio Units (RRUs) are not antennae and are not subject to development contributions under the terms of the Development Contribution Scheme. Having reviewed the information submitted by the applicant regarding the purpose and nature of these items of equipment, and the previous Board decision referenced by the applicant (PL23.242463), I concur with both the applicant and the Planning Authority that the RRUs should not be considered to be antennae in their own right, and can instead be considered ancillary components which support the operation of antennae. Having regard to Class (m) of Appendix 3 of the Development

Contribution Scheme, which relates to telecommunications, contributions only arise in respect of masts and antennae installed on existing masts. I therefore consider that development contributions do not arise in respect of the RRUs.

7.2.3. On the basis that the RRUs are not antennae, the Planning Authority contends that the applicable development contribution can be reduced to €51,800, based on the ten additional dishes over the total number previously permitted under Reg. Ref. 10/120. The applicant contends that development contributions are not payable in respect of the additional dishes, on the basis that they were installed as exempted development under Class 31 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended, and the applicant also contends that the Board has not previously included dishes as antennae in the calculation of development contributions in a number of cases (PL18.246408, PL18.242962 and PL18.246407).

7.2.4. With regard to the applicant's contention regarding exempted development, I note that the provision under Class 31(h) for additional antennae to be installed on an existing support structure as exempted development only allows for a total of 12 antennae, of which not more than eight can be dish-type. Setting aside the RRUs, it is clear that there are more than 12 antennae attached to the structure. I also note that Condition 4 of the previous planning permission Reg. Ref. 10/120 states that the antennae type and mounting configuration shall be in accordance with the details submitted and shall not be altered with a prior grant of planning permission. I do not consider, therefore, that the applicant can rely on the exempted development provisions of Class 31(h) in seeking the omission of development contributions for the ten dishes.

7.2.5. Furthermore, notwithstanding the applicant's argument regarding exempted development provisions for antennae, the fact remains that the applicant has sought retention permission for the dishes and flat panel antennae installed subsequent to the previous grant of planning permission. Since retention permission was sought for

the additional dishes and panel antennae, I consider that the Planning Authority is correct in seeking to apply a development contribution in accordance with the terms of their Development Contribution Scheme which clearly and unambiguously states that additional antennae installed on an existing mast are subject to a development contribution. While Section 19(e) of the Development Contribution Scheme includes an exemption for telecommunications development which is solely for the provision of broadband infrastructure, there is no evidence that that is the case in this instance and in any event, Section 18 states that the exemptions/reductions in Section 19 will not be applicable in respect of permissions for retention of development.

7.2.6. With regard to the applicant's contention that the Board has previously not considered dishes to be antennae for the purposes of calculating development contributions, the Planning Authority contends that these dishes are parabolic antennae, and therefore are subject to development contributions. I would tend to agree with the Planning Authority that these dishes should be considered to fall within the 'antenna' class of the Development Contribution Scheme, and I note in this regard that the exempted development class 31(h) referred to by the applicant includes both dishes and panels within its use of the term 'antennae'. I therefore consider that a development contribution of €51,800 arises in respect of the additional dishes for which retention permission was sought, in accordance with the terms of the Development Contribution Scheme

7.2.7. Finally, with regard to the issue of 'double charging', I do not consider that it has occurred in this case. In its calculation of development contributions for this case, the Planning Authority has not sought to apply a development contribution to the previously permitted support structure and antennae, only to the additional development which had taken place following the grant of permission and for which retention permission was sought. While the Planning Authority has now accepted that the RRUs did not come within the terms of the Development Contribution

Scheme, the ten additional dish-type and panel-type antennae do, in my opinion. With regard to the previous Board decisions referenced by the applicant (PL18.242750, PL21.241352 and PL26.245312), I do not consider that these are applicable or relevant to the subject appeal, since they relate to cases where development contributions were sought in respect of development for which development contributions had previously been paid. That issue does not arise in this case, as noted above.

- 7.2.8. In conclusion, I recommend that the Board direct the Planning Authority under subsection (10)(b) of section 48 of the Planning and Development Act 2000, as amended, to amend the wording of Condition 1 to reduce the amount payable from €62,160 to €51,800, since the original sum charged by the Planning Authority included development which did not come within the terms of the relevant Development Contribution Scheme.

7.3. **Appropriate Assessment**

- 7.3.1. The appeal site is surrounded by, but is not part of, the Slieve Beagh SPA (Site Code 004167). The Special Conservation Interest of this SPA is the Hen Harrier (*Circus cyaneus*) and the sole Conservation Objective is to maintain or restore the favourable conservation condition of the species. Having regard to the nature and scale of the proposed development, which relates to the retention of a long-established structure previously permitted on a temporary basis and associated equipment affixed to this structure, the nature of the receiving environment and the proximity to the nearest European sites, I am satisfied that 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

8.1. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the Planning Authority under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended, to AMEND Condition 1 as follows.

1. The developer shall pay to Monaghan County Council a sum of €51,800.00 in accordance with the General Development Contribution Scheme 2013-2019 (as revised), made by the Council under Section 48 of the Planning and Development Act 2000 (as amended), towards expenditure incurred or proposed to be incurred by the Council in the provision of community, recreation and amenity public infrastructure and facilities in the area.

The sum attached to this condition shall be revised from the date of the grant of planning permission to the value pertaining at the time of payment in accordance with the Wholesale Price Index for Building and Construction (Materials and Wages).

The development contribution shall be paid in full within six months of the date of planning permission hereby granted, or in accordance with a schedule of phased payments agreed in writing by Monaghan County Council within six months of the date of planning permission hereby granted.

Reason: It is considered appropriate that the developer should contribute towards the expenditure incurred or proposed to be incurred by the Council in the provision of community, recreation and amenity infrastructure and facilities, which will facilitate the proposed development.

9.0 REASONS AND CONSIDERATIONS

9.1. Having regard to:

- (a) The planning history associated with the site;
- (b) the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities 1996 and the amending Circular Letter PL07/12;
- (c) The Development Contributions Guidelines for Planning Authorities, 2013;
and
- (d) the provisions of the Monaghan County Council General Development Contributions Scheme 2013-2019, as amended;

the Board considers that the terms of the Development Contribution Scheme have not been properly applied by the Planning Authority. The Board considered that the two Remote Radio Units form ancillary components of existing antennae and are not separate antennae for the purposes of Class (m) of the Development Contribution Scheme and do not therefore fall within the terms of the Scheme. The Board also considered that the ten additional dish-type and panel-type antennae for which retention permission was granted, and which had not formed part of the development previously permitted under Reg. Ref. 10/120, for which development contributions had been levied, would be subject to a development contribution in accordance with the terms of the Development Contribution Scheme.

Niall Haverty

Planning Inspector

5th October 2017