



An
Bord
Pleanála

Inspector's Report 16.248862

Development	Retention of an existing 18m high multi-use monopole, telecommunications antenna, dish associated equipment cabin, security fence and access track
Location	Rinshinna Td, Castlebar, Co Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	17/306
Applicant	Vodafone Ireland Ltd
Type of Application	Retention
Planning Authority Decision	Grant Retention with Conditions
Type of Appeal	First Party
Appellant	Vodafone Ireland Ltd
Date of Site Inspection	No inspection required
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1. The site is located at Rinshinna Td, Castlebar, Co Mayo. Per planner's report the site is located along the Regional Road R373 approximately 2kms east of Castlebar Town Centre. This is a regional road which links onto the National Road N60. The site is accessed via a private road and located to the rear of an existing sports ground.
- 1.2. As the appeal only relates to a financial contribution a site inspection was not carried out in this instance.
- 1.3. The site is given as 0.0063ha.

2.0 Proposed Development

- 2.1. The application is for retention of an existing 18m high monopole together with associated equipment and access.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant retention subject to 11 conditions including:

No. 11 The developer shall pay Mayo County Council a financial contribution in respect of public infrastructure and facilities benefiting development in the area of Mayo County Council 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, as amended.

The contribution shall be paid prior to the continuation of use of development or in such phased payments as Mayo County Council may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment.

Details of the application of the terms of the Scheme shall be agreed between Mayo County Council and the developer.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Castlebar and Environs Development Plan 2008-2014 section 10.6 is cited.
- It is considered that the visual impact would be of local significance only and would not have a significant impact on the residential amenities of the area.
- Recommending that a contribution in the region of €5,000 may be appropriate in this instance in accordance with the current adopted Development Contribution Scheme and reinforced by an Bord Pleanála precedence of permission P09/1285. The report also refers to PL16.245557 which it states confirms the attaching of a condition under the Development Contributions Scheme for a public utility development; a waste water treatment plant by Irish Water, which, similarly to the current application is not specifically identified / named in the Development Contribution Scheme.

3.2.2. Other Technical Reports

Road Design – no objection.

Mayo National Roads Design Office – the application does not raise any issues for the National Road system that needs to be addressed.

3.3. Prescribed Bodies

TII – no observations to make.

4.0 Planning History

P09/661 planning permission granted for the development Sept. 2009: condition no. 3 stated that it was for a period of five years from the date of final grant, i.e. until September 2014.

5.0 Policy Context

5.1. Development Plan

5.2. Mayo County Council Development Plan 2014-2020 is the operative plan. Chapter 3 sets out the Council's policies in relation to infrastructure which supports investment in infrastructure as a key element in economic growth, employment, wellbeing of citizens and environmental sustainability; that the Council will continue to support extensions and improvements to existing infrastructure and services in the County; and will also support innovation in infrastructure such as the development of Renewable Energy, Information and Communication Technology and Smarter Travel.

5.3. Specific objectives include:

5.4. TC-01 It is an objective of the Council to support and facilitate the delivery of high capacity ICT infrastructure, broadband networks and digital broadcasting in the County having regard to the Government Guidelines Telecommunications Antennae and Support Structures-Guidelines for Planning Authorities 1996 (DoEHLG) and Circular Letter PL 07/12 and where it can be demonstrated that the development will not have significant adverse effects on the environment including the integrity of the Natura 2000 network.

5.5. TC-02 It is an objective of the Council to locate telecommunication masts in non-scenic areas, having regard to the Landscape Appraisal of County Mayo, or in areas where they are unlikely to intrude on the setting of, or views of/from, national monuments or protected structures; and

5.6. TC-03 It is an objective of the Council to set up a register of approved telecommunication structures in the County to assist in the assessment of future telecommunication developments and maximizing the potential for future mast sharing and co-location.

5.7. Development Contributions Scheme

5.8. The initial County Development Contribution Scheme was adopted on 1st March 2004. Revised charges were adopted on 5th February 2007 however the components of the Development Contribution Scheme and the rationale for applying the scheme were not changed in the revised Mayo Scheme.

5.9. Mayo County Council Supplementary Development Contribution Scheme was made on the 9th of March 2009. This Supplementary Development Contribution Scheme is made pursuant to Section 49 of the Planning and Development Acts 2000-2006, and indicates the financial contributions, which Mayo County Council may include as conditions of planning permission in respect of certain water, wastewater and surface water schemes which have already been provided or are intended to be provided by or on behalf of Mayo County Council.

5.10. National Guidelines and Legislation

5.11. Planning and Development Act 2000 as amended:

S 48 (1) of the Act refers to payment of a development contribution based on a scheme made under the section ((2) (a)) and the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by a local authority in respect of public infrastructure and facilities which benefit the proposed development, ((2) (c)).

S 48 (12) (a) requires a special contribution condition to specify the particular works carried out or proposed to be carried out by any local authority to which the contribution relates.

5.12. Telecommunications Antennae and Support Structures Guidelines for Planning Authorities, July 1996

The guidelines essentially support the development of telecommunication services in the country and provide guidance on site selection and minimising environmental impacts.

5.13. Circular Letter: PL07/12 – Telecommunications Antennae and Support Structures Guidelines

The circular issued by the Minister on the 19th of October 2012 updates certain sections of Telecommunications Antennae and Support Structures Guidelines (1996) and includes reference to Draft Guidelines on Development Contributions; the principal aim of which is to provide updated guidance on the preparation of development contributions to reflect changed economic circumstances since guidance was last issued in 2007, and also to reflect the Government's focus on job creation and investment in infrastructure for the future. The Draft Guidelines require 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.

Where a renewal of a previously temporary permission is being considered the practice of attaching a condition to a permission to limit its life should cease.

5.14. Development Contributions Guidelines for Planning Authorities, 2013

These guidelines are intended inter alia to assist planning authorities to achieve, through their development contribution schemes, a balance between the costs of the services provided and the need to support economic activity; and include:

All planning authorities should commence a review of their existing development contribution scheme(s) by 31st March 2013 to ensure compliance with the content of this guidance.

Among the items planning authorities are required to include in their development contribution schemes are waivers for broadband infrastructure (masts and antennae). 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.

5.15. Development Management – Guidelines for Planning Authorities, 2007

Section 7.12 refers to conditions requiring development contributions (sections 48 and 49 of the Planning Act 2000). Section 8.12 refers to appeals against contributions conditions.

6.0 The Appeal

6.1. Grounds of Appeal

6.2. A first party appeal against the decision of the planning authority to attach condition no. 11 has been submitted by 4 site on the 11th July 2017. The first party is appealing condition no. 11 under Section 48(10)(b) of the Planning and Development Act 2000. The grounds includes:

- The incorrect application of Mayo County Council's Development Contribution Scheme 2007.
- Under the original permission P09/661 a contribution was requested by the planning authority and paid in full.
- There is no reference in the Mayo Development Contribution Scheme 2007 setting out the basis for the determination of a contribution in respect of different classes or descriptions for a telecommunication structure.
- Any attempt to indicate this as a special contribution would be unjustified given that no explanation of same has been provided.
- The issue of double charging arises.
- The 2013 Guidelines require planning authorities to include in their development contribution schemes waivers for broadband infrastructure.
- Various planning histories are cited as precedent.

6.3. Planning Authority Response

6.4. The planning authority has not responded to the grounds of appeal.

7.0 Assessment

7.1. This is a first party appeal made against one condition relating to a development contribution under Section 48 of the Planning and Development Act, 2000. This appeal concerns the retention of a 18m high telecommunications support structure with antennas.

7.1.1. **Section 48 (13) (a)**

7.2. The proposed development is in accordance with the Development Plan policy and is considered acceptable in principle. I am satisfied that the appeal can be confined to the matters concerning the specific condition which the first party has appealed and that this case can be treated under Section 48 (13) (a) of the Planning and Development Act, 2000.

7.3. P09/661 which permitted the erection of the mast in Sept. 2009 for a temporary period of five years i.e. until September 2014, has attached a condition: No. 15, which required the payment of a development contribution, which payment appears to have been made.

7.3.1. **Retention**

7.4. The application is referred to in the application form, published notice, site notice and in a letter accompanying the application as an application for 'retention'. The permission expired in September 2014.

7.5. The Development Contributions Guidelines for Planning Authorities 2013, which require planning authorities to commence a review of their existing development contribution scheme(s) by 31st March 2013 and to include in their development contribution schemes waivers for broadband infrastructure (masts and antennae); states that such waivers should not apply to retention permissions.

7.6. The Board will note that per the Development Contributions Guidelines for Planning Authorities, 2013, all planning authorities were required to commence a review of their existing development contribution schemes by 31st March 2013 to ensure compliance with the content of the guidance. There is no indication on the Mayo County Council website that such a review has commenced. The Board may consider that this delay is in breach of the guidelines.

7.7. It is worth considering whether it is reasonable to regard this application as the renewal of a previously permitted development which has a temporary permission, the type of development the subject of Circular Letter: PL 07/12; or whether it should be regard as retention. In most cases where a telecommunications structure is permitted for a temporary period an application to renew the permission, sometimes termed 'retain' is sought prior to the expiry date, to which a waiver should not apply.

In the present case there has been no permission for the development the subject of this retention application since September 2014, although it continues to operate on the site.

7.8. Notwithstanding that retention is required in this case, I consider, on balance that the spirit of the guidelines is that there should be a waiver of development contributions in the case of repeat applications for telecommunication structures.

7.9. The Board may consider that as an application for retention it is appropriate to attach a development contribution condition.

7.9.1. Compliance with Development Contribution Scheme (Section 48(2)(a))

7.10. It is the first party's submission that at present the Mayo County Council Development Contribution Scheme does not identify 'Telecommunications / Communications Installations' as a class of development which would be subject to a requirement to pay a development contribution. Reference is made to a number of previous Board decisions wherein the Board determined that Mayo County Council had failed to clearly state the amount of contribution payable under the Scheme in respect of different classes of development and that the Council had provided no clear definition or basis for the calculation of same. In these cases the Board directed the Council to remove those conditions requiring development contributions. The Board is requested to remove Condition No. 11 on the basis that the terms of the Scheme have not been properly applied in respect of the subject proposal. The first party points out that Mayo County Council are currently using their 2007 Development Contribution Scheme.

7.11. There appears to be no provision in the current scheme which would allow the Planning Authority to impose a development contribution of €5,000 in respect of the subject proposal i.e. a telecommunications mast / base station, antennae or associated equipment. The Board has an extensive history of determining planning appeals which have sought the imposition of development contributions in respect of proposals for telecommunications apparatus in Co. Mayo. In each of these cases, the Board has directed the removal of the relevant condition as there is no stated provision in the Mayo County Council Development Contribution Scheme for the levying of financial contributions in respect of the provision of telecommunications masts, antennas or associated equipment. Based on the foregoing, and noting that

there has been no change to the Development Contribution Scheme which would warrant a different conclusion, in my opinion the Planning Authority has incorrectly applied the terms of its Development Contribution Scheme and should be directed to remove Condition No. 11.

7.12. Special Development Contribution (Section 48(2)(c))

7.13. Since it is not stated in the condition as drafted that the contribution is required under Section 48(2) (a) it should be noted that a special contribution can be levied under Section 48(2) (c). The Board will note that no evidence has been presented that specific and exceptional costs would be incurred by the planning authority in providing public infrastructure and facilities to benefit the proposed development and in the absence of such evidence, condition 11 would not come within the scope of section 48(2)(c) of the Planning and Development Act, 2000 and would, therefore, be inappropriate.

7.13.1. Amount of Contribution per Condition 11

7.14. Condition 11 requires the payment of a development contribution of an unspecified amount. The planning report stated that a contribution in the region of €5,000 may be appropriate in this instance. This appears to be based on the contribution levied in condition no. 15 of P09/661. Should the Board decide that a contribution is appropriate in this case it is recommended that the condition be amended and that the amount be specified.

8.0 Recommendation

8.1. On the basis of my assessment, I recommend that the Planning Authority be directed to remove Condition No. 11. A draft order is set out below.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to the fact that there is no stated provision in the Mayo County Council Development Contribution Scheme for the levying of financial contributions in respect of the provision of telecommunications masts, antennas or associated equipment and in the absence of a response from the planning authority, the Board considered that the terms of the said scheme had not been properly applied in this case.

Decision

The Board considered, based on the reasons and considerations set out above, that the terms of the Development Contribution Scheme for the area hasd not been properly applied in respect of condition number 11 and directs the said Council under subsection (10) (b) of section 48 of the Planning and Development Act, 2000 to REMOVE condition number 11 and the reason therefor.

Planning Inspector

19th October 2017

Appendix 1 Copy extracts from Mayo County Development Plan 2014 – 2020

Appendix 2 Copy extracts Development Contributions Guidelines for Planning Authorities, 2013

Appendix 3 Copy of Circular Letter: PL07/12 – Telecommunications Antennae

and Support Structures Guidelines