



An
Bord
Pleanála

Inspector's Report PL18.249028.

Development	Retention of telecommunication structure.
Location	Drumlandrick TD, Broomfield, Castleblaney, Co. Monaghan.
Planning Authority	Monaghan County Council.
Planning Authority Reg. Ref.	17/236.
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	25 th October 2017.
Inspector	Karen Kenny.

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1.0 Site Location and Description

1.1.1. The site is located in the rural townland of Drumlandrick, approximately 6 kilometres south of Castleblaney and between the N2 Carrickmacross to Castleblaney Road and the N53 Dundalk to Castleblaney Road.

1.1.2. The site comprises a telecommunications mast and associated equipment within a fenced compound with an access track from the public road. The site is on elevated ground and is visible from the N2 and from adjoining county roads in the area. It is only visible intermittently from the Dundalk - Castleblaney Road.

2.0 Proposed Development

2.1.1. Permission was sought to:

- Retain an existing telecommunications support structure and associated antennae and link dishes, associated equipment cabins, security fencing and access track, previously approved under Reg. Ref. 10/380.
- Retain 11 no. remote radio units (RRU) and 5 no. dishes added to the mast after the grant of planning permission under Reg. Ref. 10/380.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Grant permission subject to 5 no. conditions. Condition No. 1 is the subject of this appeal and states the following:

- a. The developer shall pay to Monaghan County Council a sum of €25,900.00 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. Planning Reports

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

- Although situated in an elevated position in the landscape and visible from the N2 the visual impact of the mast is acceptable.
- Note applicant's justification that the site is an important 3G and 4G site and the retention of the site would ensure it continues to act as a strategic link from a number of neighbouring base station sites to the main network switch line.
- The use of the site for telecommunications has been agreed by virtue of previous grant of permission.
- 5 no. additional dishe antennae have been added to the mast. Contributions are due in respect of the additional antennae.

3.2.3. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

The following planning history relates to the appeal site:

Reg. Ref. 10/380: Application to retain telecommunications support structure, antennae and associated equipment within a fenced compound. Permission granted subject to 8 no. conditions. The following conditions are of note:

- Condition 1: Development contribution of €30,080.
- Condition 2: Permission for 5 years.

Reg. Ref. 04/1504: Application to retain telecommunications support structure, antennae and associated equipment within a fenced compound. Permission granted for a period of 5 years.

Reg. Ref. 98/784 / ABP PL18.111352: Application for telecommunications support structure, antennae and associated equipment with access road and security fence. Permission granted by the Planning Authority. The decision was subject to a third party appeal. An Bord Pleanála decided to grant planning permission for a period of 5 years.

5.0 Policy Context

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

5.1.1. The Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996) offer general guidance on planning issues so that the environmental impact of telecommunications antennae and support structures is minimised and that a consistent approach is adopted by the various planning authorities.

5.2. Circular Letter PL 07/12.

5.2.1. Circular Letter PL 07/12 revises the 1996 Guidelines. The Circular sets out policy in relation to temporary permissions, separation distances from houses and schools, bonds and development contributions, health and safety and the creation of a database. Section 2.2 advises Planning Authorities to cease attaching time limiting conditions, except in exceptional circumstances. Section 3 notes that the 1996 Guidelines pre-date the introduction of Development Contribution Schemes. It states that the then draft Development Contribution Guidelines for Planning Authorities requires that all future Development Contribution Schemes must include waivers for broadband infrastructure 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'. The following elements of this section are considered relevant:

- 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): 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 (n) 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 to adjust the rate of contributions in accordance with changes to the Wholesale Price Index for Building and Construction (CSO). The rate effective from January 2016 is:

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

5.6. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A first party appeal has been received. The appeal seeks the removal of Condition No. 1 which requires the payment of a development contribution. The grounds of 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.
- Development Contribution Scheme applies a contribution rate of €5,180 per antenna installed on an existing telecommunications mast.

- Planner's Report details a charge of €5,180 for each of the 5 no. transmission dishes added to the structure following the granting of Reg. Ref. 10/380. The dishes attached to the support structure are not antennae.
- Equipment attached to support structure under Class 31 exemptions and should not be subject to a development contribution.
- €30,560 was previously paid by the applicant to Monaghan County Council for the previous retention permission (10/380) and a second levy should not apply in accordance with the Development Contributions Guidelines for Planning Authorities or relevant Board precedents. An Board Pleanála cases PL18.242750, PL21.241352 and PL26.245312 cited by way of support.

6.2. Planning Authority Response

- In accordance with Section 2 of the Development Contributions Guidelines, 2013 Monaghan County Council has incorporated a waiver in respect of development solely for broadband. This is considered to be in keeping with the Implementation Programme on Mobile Phone and Broadband Access.
- Development Contribution Guidelines state that no waiver should be provided in respect of any application for retention permission. This is transposed into the Monaghan Development Contribution Scheme.
- Transmission dishes are parabolic antennae and thus are liable to be levied in the same way as panel antennae.
- Permission did not seek to impose development contributions in respect of the infrastructure already permitted in 2010 to ensure that 'double charging' does not take place.
- The Development Contribution Scheme states that development contributions should be charged in respect of any additional antennae installed on an existing mast and as such, contributions are liable in respect of the five additional dishes.

- The other appeals cited relate to repeat applications for the same development, where no additional antennae were installed and are thus not comparable or relevant.
- Monaghan County Council cite recent decisions PL18.248750 and PL18.248752 where the Board determined that development contributions should be levied on additional antennae installed after permission had been granted for the retention of the original mast.

6.3. **Observations**

None.

7.0 **Assessment**

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 €25,900 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 on the basis that the terms of the Monaghan Development Contribution Scheme has not

been properly applied. I would note that the Board in considering the appeal is required under the provisions of the legislation to apply the scheme as adopted by the Planning Authority. The Board have no legal jurisdiction to interpret or evaluate the merits of any financial contribution scheme as adopted by the Planning Authority.

7.2.2. The applicant contends that a levy of €30,560 has already been applied to the existing mast and antennae under the previous temporary permission Reg. Ref. 10/380 and that a second levy should not apply as it represents double charging. The applicant cites previous An Board Pleanála cases PL18.242750, PL21.241352 and PL26.245312 by way of support. The applicant also contends that the Board has not included transmission dishes as antenna in the calculation of development contributions for telecommunications equipment under previous cases citing PL18.246408, PL18.242962 and PL18.246407. The Planning Authority in their response state that the condition does not seek to impose development contributions in respect of the infrastructure already permitted in 2010 and that the charge is in respect of new antennae. In addition, the applicant argues that the development contributions are not payable in respect of the additional dishes on the structure, 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.

7.2.3. 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. It is clear that there are more than 12 antennae and 8 dishes attached to the structure. 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 five dishes. 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 installed subsequent to the previous grant of

planning permission. Since retention permission was sought for the additional dishes, I consider that the Planning Authority has correctly applied the development contribution in respect of dish antennae added after the grant of permission under Reg. Ref. 10/380, in accordance with the terms of their Development Contribution Scheme. Section 3 (n) of the Development Contribution Scheme as adopted is clear and unambiguous in that separate levies are required for the mast and the antennae.

7.2.4. 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 this 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.

7.2.5. 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, I concur with the view of the Planning Authority. The dishes should be considered to fall within the 'antenna' class of the Development Contribution Scheme. 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'.

7.2.6. 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. The five additional dish-type antennae do fall within the terms of the Development Contribution Scheme, in my opinion. With regard to the previous Board decisions referenced by the applicant, I do not consider

that these are applicable or relevant to the subject appeal, as the particulars of these cases differ from the current case.

- 7.2.7. In conclusion, arising from my assessment above and having particular regard to the fact that the 5 no. dish antennae are new antennae and did not form part of the previous contribution under Reg. Ref. 10/380 I consider that the antennae should attract a financial contribution in accordance with the adopted Development Contribution Scheme of €25,900 (€5,180 x 5). I therefore recommend that Condition No. 1 is not amended.

7.3. **Appropriate Assessment**

- 7.3.1. 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. The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area were properly applied.

9.0 **REASONS AND CONSIDERATIONS**

It is considered that the terms of the Monaghan County Council Development Contribution Scheme 2013–2019, as amended, were properly applied to the five additional dish type antennae for which retention had been sought, and which had not formed part of the previously permitted development under planning register reference number 10/380 because the financial contribution, as set out in condition number 1 of the planning authority's decision, had been assessed under Class 3 (n) of Appendix 3 to the Scheme, which provides for the payment of financial contributions per antenna installed on an existing mast.

Karen Kenny

Senior Planning Inspector

26th October 2017