



An
Bord
Pleanála

Inspector's Report ABP-300040-17

Development	Retain existing 36m high telecommunications support structure carrying antennas and link dishes, together with ground based equipment units and security fencing.
Location	Drumsheen, Bunnyconnellan, Co. Mayo.
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	16/960
Applicant(s)	Three Ireland Services (Hutchison) Ltd
Type of Application	Retention permission
Planning Authority Decision	Grant retention permission
Type of Appeal	First party against conditions
Appellant(s)	Three Ireland Services (Hutchison) Ltd
Observer(s)	None
Date of Site Inspection	No site inspection
Inspector	Donal Donnelly

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Drumsheen in northern Co. Mayo approximately 10m east of Ballina. The site is within a forestry plantation on the western foothills of the Ox Mountains at an elevation of approximately 72m above sea level. Access to the site is via a track off a local road.
- 1.2. There is an existing 36m high telecommunications support structure on site set within a 350 sq.m. compound surrounded by security fencing. There are antennas and link dishes on the structure and ground based equipment units.

2.0 Proposed Development

- 2.1. Planning permission is sought for retention of the 36m high telecommunications support structure, antennas, link dishes, equipment units and security fencing.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Mayo County Council issued notification of decision to grant permission subject to six conditions.
- 3.1.2. Condition 5 requires the applicant to pay a financial contribution in respect of public infrastructure and facilities in accordance with the terms of the Development Contributions Scheme. No amount is specified under this condition and it is stated that the details of the application of the terms of the scheme shall be agreed between and Council and developer.

3.2. Planning Authority Reports

- 3.2.1. The decision of the Planning Authority is consistent with the recommendation in the final Planner's Report to grant permission.
- 3.2.2. The Planner's Report highlights that the Development Contribution Scheme lists three categories of development (residential, commercial and industrial), which the Council decided on to cover all proposals. As such, all developments with a commercial gain are subject to a contribution under the scheme. It appears to the

Case Planner that the Board decided as far back as 2009 that a contribution for a mobile phone mast could not be applied, as it was not specifically referred to in the Mayo County Council Development Contributions Scheme. However, it is submitted that the Board did not appear to take such a stance on any other type of commercial development levied under the Mayo County Council Development Contributions Scheme.

- 3.2.3. Reference is made to Reg. Ref: P09/1285 where the Board added a special development contribution condition of €5,000, as well as a condition for a cash deposit for site restoration. The Council continued to believe that the Scheme, as a reserved function of the Council, should be applied as adopted by the members, but was left with no option but to follow this new precedence by the Board. Recent decisions by the Board, however, have removed the special development contribution.
- 3.2.4. It is acknowledged in Department Circular PL07/12 that a waiver should be included in new Development Contributions Schemes for broadband infrastructure, but as Mayo County Council has not yet made a new Development Contribution Scheme, the Planning Authority state that it has not been possible to insert such a waiver at this stage. Therefore, it has continued to apply contributions until the new Scheme is adopted.
- 3.2.5. The Planning Authority recommends a contribution in the region of €5,000 as reinforced by the precedent of P09/1285 (PL16.236245). A cash deposit is not recommended as per the Department Circular.
- 3.2.6. Finally, it is noted that Ref: PL16.245557 confirmed the attachment of a condition under the Development Contributions Scheme for a public utility (wastewater treatment plant) that was not specifically referred to in the Development Contributions Scheme.

4.0 Planning History

Mayo County Council Reg. Ref: P01/832

- 4.1. Permission granted in 2001 to ESAT Digiphone Ltd. for erection of the 36m telecommunications support structure, and associated equipment and works.

Condition 16 of this decision required the payment of a development levy of €5,000 to cover the cost of any damage to the public road from construction traffic to and from the site.

Mayo County Council Reg. Ref: 06/605

- 4.2. Retention permission granted in 2006 for the telecommunications support structure. Condition 7 of this permission required the payment of €300 in respect of public infrastructure and facilities benefiting development in the area in accordance with the terms of the Mayo County Council Development Contribution Scheme.

Mayo County Council Reg. Ref: 11/421 (PL16.239412)

- 4.3. The Board decided to remove Condition 7 from the Council's decision to retain the telecommunications structure on site on the basis that a special development contribution for road upgrading has already been paid. Furthermore, in the absence of any evidence that specific and exceptional costs would be incurred again by the planning authority in providing public infrastructure and facilities to benefit the proposed development, it was considered that the contribution condition would not come within the scope of section 48 (2) (c).

5.0 Policy Context

5.1. Mayo County Development Plan, 2014-2020

- 5.1.1. It is an objective of the Council (E-07) to review the Development Contribution Scheme. Table 4 – Projects Arising for the Plan sets an estimated commencement date of 2014 and an estimated completion date of 2015 for this review.

5.2. Telecommunications Antennae & Support Structures (1996) & Circular letter PL 07/12

- 5.3. These Guidelines encourage the sharing of facilities and clustering to reduce the visual impact on the landscape.
- 5.4. A circular was issued under Section 28 of the Planning and Development Act, 2000 (as amended) to update certain sections of the Guidelines. Planning Authorities are now advised that temporary permissions should cease.

- 5.5. Reference is also made to the (then) Draft Guidelines on Development Contributions which stated 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.
- 5.6. It is reminded in the adopted Development Contributions Guidelines for Planning Authorities 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.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A first party appeal against the Council's decision was submitted by the applicant. The grounds of appeal and main points raised in this submission are summarised as follows:

- Board has previously adjudicated on the application of a development contribution on similar appeals, where Mayo County Council had failed to clearly state the amount of contribution payable under different classes of development within the Scheme, and there was no clear definition or basis to the amount imposed.
- Circumstances in which PL16.246688 was based are effectively the same as the current instance – there is no provision in the Scheme for the levying of financial contributions in respect of the provision or retention of telecommunications masts, antennas or associated equipment.
- Council's request for contributions does not fall within any of the categories under the Planning and Development Act, 2000 (as amended) under Section 48(2) a, b & c.
- Council has chosen to ignore Department Circular P07/12. 2013 Development Contributions Guidelines advises that planning authorities are required to include waivers for broadband infrastructure (mast and antennae).

- Mobile Phone and Broadband Taskforce Report states that all remaining local authorities to be fully compliant with the Development Contribution Guidelines for Planning Authorities – timeline for delivery of this action was first quarter 2017.
- Mayo Development Contributions Scheme does not clearly identify what type of applications attract development contributions, nor does it indicate what development falls into which class.

6.2. Planning Authority Response

- 6.2.1. Mayo County Council was invited by the Board to submit comments in relation to the appeal and to supply details of the calculation involved, the basis on which the calculation was made and the specific provisions in the scheme on which the calculation was based. No response to these requests was received.

7.0 Assessment

- 7.1. This is an appeal against a financial contribution condition only attached to Mayo County Council's decision to grant permission for the retention of a 36m high telecommunications support structure carrying antennas and link dishes, together with ground based equipment units and security fencing at Drumsheen, Bunnyconnellan, Co. Mayo.
- 7.2. Under Section 48 10 (b) of the Planning and Development Act, 2000 (as amended), an appeal may be brought to the Board where an applicant for planning permission considers that the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the Planning Authority.
- 7.3. Condition 5 requires the developer to pay a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority in accordance with the terms of the Development Contributions Scheme. No actual amount of contribution is specified in the condition and it is stated that details of the application of the terms of the Scheme shall be agreed between Mayo County Council and the developer.

- 7.4. It should be noted that the Board has recently determined a number of cases involving development contributions for telecommunications structures in Co. Mayo and has continuously ordered the removal of the development contributions condition in the absence of any specific provision in the Mayo County Council Development Contribution Scheme for the levying of financial contributions in respect of telecommunications masts and mobile phone infrastructure.
- 7.5. The Planning Authority noted in the assessment of this application that the Council, when preparing the Development Contributions Scheme, decided on three categories of development (residential, commercial and industrial) to cover all proposals, and as such, all developments with a commercial gain are subject to a contribution under the scheme. The Planning Authority therefore recommend a contribution in the region of €5,000. The basis for this calculation is a precedent case (P09/1285/ PL16.236245) where the Board attached a special development contribution condition of €5,000 for the retention of a telecommunications mast. The Planning Authority acknowledge that a new Development Contribution Scheme has yet to be made and therefore it has not been possible to apply a waiver for broadband infrastructure, as recommended in the Development Contribution Guidelines for Planning Authorities. The Mayo Development Contribution Scheme dates from 2004 (charges amended 2007).
- 7.6. I would be in agreement with the Planning Authority that the adoption of Development Contribution Schemes is a reserved function of the elected members of the local authority. However, Section 48(2)(a) of the Planning and Development Act, 2000 (as amended) states that the basis for the determination of a development contribution shall be set out in the development contribution scheme. It should be noted that the Board invited the Planning Authority to submit comments in relation to the appeal and to supply details of the calculation involved, the basis on which the calculation was made and the specific provisions in the scheme on which the calculation was based. There is no basis set out for determining a contribution for telecommunications infrastructure with the Mayo Development Contribution Scheme and the Planning Authority has not furnished the Board with any calculations following the invitation to do so.
- 7.7. Having regard to the above, I would be of the view that it is not possible to determine an amount of development contribution in the absence of any specific provision in

the Development Contributions for levying this type of development. It is not satisfactory to estimate or correlate a general financial contribution with a precedent relating to a special development contribution, particularly when these types of contribution refer to developments where there are specific exceptional costs not covered by a scheme. Moreover, a development levy of €5,000 was paid for this development under the original planning permission (Reg. Reg. P01/832) to cover the cost of any damage to the public road from construction traffic to and from the site, and subsequently under a retention permission in 2006 (Reg. Ref: 06/605) for €300 in respect of public infrastructure and facilities in accordance with the terms of the Mayo County Council Development Contribution Scheme.

7.8. Furthermore, the Board decided to remove a special development contribution condition attached by the Council to another retention permission for this development (PL16.239412) on the basis that such a contribution for road upgrading has already been paid, and in the absence of any evidence that specific and exceptional costs would be incurred again by the planning authority in providing public infrastructure and facilities to benefit the proposed development. In this regard, it is stated in the Development Contributions Guidelines 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.”*

7.9. Finally, it should be noted that the Report of the Mobile Phone and Broadband Taskforce, published in December 2016, sets out recommendations and actions to alleviate barriers to mobile reception and broadband access. It also identifies a number of areas where direct action by Government Departments and State Agencies can ensure accelerated benefits to consumers from industry investments. The Taskforce is of the view that all remaining local authorities should immediately bring themselves into full compliance with the 2013 Guidelines in relation to development contributions. A first quarterly progress report published in June 2017 noted that 26 of the 31 local authorities have adopted revised development

contribution schemes in compliance with the 2013 guidelines, and of the remaining five, three schemes are currently under review.

8.0 Recommendation

- 8.1. The Board, in accordance with section 48 of the Planning and Development Act, 2000, (as amended) considered that the terms of the Mayo County Council Development Contribution Scheme for the area had not been properly applied in respect of Condition 5 and directs the said Council to REMOVE said condition.

9.0 Reasons and Considerations

The proposed development is for continuance of use of an existing telecommunications mast and mobile phone infrastructure. In the absence of any specific provision in the Mayo County Council Development Contribution Scheme for the levying of financial contributions in respect of telecommunications masts and mobile phone infrastructure, it is considered that the terms of the Scheme have not been properly applied by the planning authority in this instance. Furthermore, it is considered that it would be inappropriate to attach a development contribution condition under section 48 of the Planning and Development Act, 2000 (as amended) in this instance as development contributions have been paid for this development at this site and to apply a development contribution condition in this instance would amount to “double charging”.

Donal Donnelly
Planning Inspector

24th January 2018