



An
Bord
Pleanála

Inspector's Report ABP300756

Development	Erect 21m telecommunications mast carrying antennas, transmission dish with associated equipment units, security fencing and access track.
Location	Ballynabolley, Leighlinbridge, County Carlow.
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	17/309
Applicant(s)	Three Ireland Services (Hutchinson) Limited.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Applicant vs Condition
Appellant(s)	Three Ireland Services (Hutchinson) Limited
Observer(s)	None
Date of Site Inspection	None
Inspector	Hugh Mannion

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1.0 Site Location and Description

- 1.1. The proposed telecommunications mast is located in Ballynabolley, Leighlinbridge, County Carlow.

2.0 Proposed Development

- 2.1. The erection of a 21m telecommunications mast carrying antennas, transmission dish with associated equipment units, security fencing and access track.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to conditions. Condition 9 required the payment of €10,000 development contribution.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning authority's planner's report recommended a grant of permission subject to conditions as set out in the manager's order.

3.2.2. Other Technical Reports:

Irish Water reported no objections.

Irish Aviation Authority reported no objections,

4.0 Planning History

No relevant history.

5.0 Policy Context

5.1. **Development Contributions Guidelines for Planning Authorities** (Department of Environment, Community and Local Government January 2013) is the current advice to planning authorities in relation to the preparation of development contribution schemes.

5.2. Development Plan

The **Carlow County Development Plan 2015 to 2021** is the relevant development plan for the area.

The **Carlow County Council Development Contribution Scheme 2017 to 2021** is the relevant contribution scheme for the area.

5.3. Natural Heritage Designations

Not relevant in this instance.

6.0 The Appeal

6.1. Grounds of Appeal

- Under the Development Contribution Guidelines for Planning Authorities (2013) planning authorities are required to provide waivers for broadband infrastructure works in their development contribution schemes.
- The National Broadband Scheme (NBS) ceased in August 2014 and was replaced by the National Broadband Plan (NBP). It is reasonable to apply the principle of no development contribution conditions in relation to that follow up scheme.
- In a similar case (PL10.248622) in County Kilkenny the Board determined that a reference to an exemption in the Kilkenny Development Contribution Scheme for developments under the NBS should apply to developments under NBP.

- It is national policy to enhance the provision of broadband infrastructure and the contribution condition should be removed in this case.

6.2. Planning Authority Response

- The development contribution scheme has been correctly applied.

6.3. Observations

- There are no observations.

6.4. Further Responses

There are no further responses.

7.0 Assessment

7.1. Section 48(1) of the Act allows planning authorities to require the payment of a financial contribution towards the costs incurred in the provision of public infrastructure and facilities in its administrative area. Section 48(2)(a) provides that a contribution shall be in accordance with a contribution scheme made under section 48. Section 48 (10) (a) provides that no appeal may be made against a contribution condition except in accordance with section 48(10) (b) and section 48(10) (b) provides that an appeal may be by the applicant only where the terms of the scheme have not properly been applied.

7.2. The Development Contributions Guidelines for Planning Authorities (DoECLG January 2013) makes the point that in order to contribute, *inter alia*, to securing infrastructure investment and economic activity planning authorities are required to provide waivers for broadband infrastructure (masts and antennae) in development contribution schemes. The guidelines were issued under section 28 of the Act which provides that “planning authorities shall have regard to those guidelines in the performance of their functions”. Carlow County Council adopted a development contribution scheme in February 2017 and contrary to the requirement set out in the Department’s 2013 guidelines to provide a waiver for broadband infrastructure (masts and antennae) instead required a contribution of €10,000 per telecoms mast.

- 7.3. The grounds of appeal reference a case in Kilkenny (PL10.248622) where the adopted contribution scheme provided an exemption from financial contributions for telecommunications infrastructure under the NBS and that Board accepted that the exemption should apply to developments under NBP. This point is noted but is not applicable to the present case.
- 7.4. The Board is constrained by section 48(10) (b) to consider if the terms of an adopted development contribution scheme have been properly applied in a particular planning decision. The act does not ask the Board if the adopted scheme has properly had regard to the Minister's Guidance under section 28. There is no ambiguity in the scheme and the appeal raised no issues in relation to double accounting.

8.0 Recommendation

- 8.1. Having regard to the provisions of the Carlow Development Contribution scheme (see marked up copy attached) I recommend that the contribution scheme has been properly applied and that the Board should attach the condition number 9.

9.0 Reasons and Considerations

The Carlow County Council Development Contribution Scheme 2017-2021 adopted on the 13th February 2017 requires the payment of a contribution of €10,000 in relation to permissions for the construction of telecommunications masts in accordance with paragraph 19 "Schedule of Contributions" in the scheme. There is no waiver from that provision set out in paragraph 30 "Exemptions" and there is no reduction from that provision set out paragraph 31 "Reductions" of the scheme. Therefore, the Board concluded that the scheme has been properly applied.

Hugh Mannion
Senior Planning Inspector

2nd May 2018