



An  
Bord  
Pleanála

## Inspector's Report ABP-300853-18

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<b>Development</b>	The construction of a 30m high telecommunications lattice support structure carrying antennas and transmission dishes, with associated equipment units, security fencing and access track.
<b>Location</b>	Springfort Retail Park, Stereame, Limerick Road, Nenagh
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	17/601242
<b>Applicant(s)</b>	Peadar McQuaid Three Ireland (Hutchison) Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	First Party v Development Contribution
<b>Appellant(s)</b>	Peadar McQuaid Three Ireland (Hutchison) Ltd..
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	16/04/2018.
<b>Inspector</b>	Auriol Considine

## **1.0 Site Location and Description**

- 1.1. The proposed development site is located within the Springfort Retail Park, Stereame, Limerick Road, Nenagh, Co. Tipperary. The Retail Park lies to the west of the town of Nenagh and is bound to the east by the Nenagh Lawn Tennis Club. The proposed location of the mast is on the eastern boundary and to the rear of the buildings in the Retail Park.
- 1.2. The site is to be accessed via the existing internal service roadway within the Retail Park from the access with the Limerick Road, the R445.
- 1.3. The site has a stated area of 0.001ha.

## **2.0 Proposed Development**

- 2.1. Permission is sought for the construction of a 30m high telecommunications lattice support structure carrying antennas and transmission dish, with associated equipment units, security fencing and access track, all at Springfort Retail Park, Stereame, Limerick Road, Nenagh, Co. Tipperary.
- 2.2. The development will include a 30m lattice mast which will carry 3 no. 2.5m high panel antennas and 1 no. 0.6m radio transmission link dish, together with associated ground equipment cabinets all located within a 10m x 10m compound.
- 2.3. The application includes the relevant plans and particulars, as well as the following
  - a covering letter
  - RF Technical Justification Report
  - Photo Montage

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to grant permission for the proposed development subject to 5 conditions.

Condition 5 is of relevance to this appeal and states as follows:

Prior to the commencement of development, a payment of a financial contribution shall be paid to the Planning Authority in respect of public infrastructure and facilities benefiting development in the administrative area of Tipperary County Council that is provided, or intended to be provided, by or on behalf of the Authority in accordance with the terms of the Tipperary County Council Development Contributions Scheme 2015-2019 made under Section 48 of the Planning and Development Act, 2000 (as amended). The amount of the development contribution under this condition is €27,200 which is calculated as follows:

<b>Class</b>	<b>Rate 2015 per unit</b>	<b>Units</b>		<b>Total</b>
<b>22</b>	<b>€17,200</b>	<b>1</b>	<b>Permission</b>	<b>€17,200</b>
<b>23</b>	<b>€2,500</b>	<b>4</b>	<b>Permission</b>	<b>€10,000</b>

**Reason:** It is considered reasonable that a contribution be made in accordance with the Tipperary Council Development Contributions Scheme 2015-2019 made under Section 48 of the Planning & Development Act 2000 (as amended).

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

- The planning Report formed the basis for the Planning Authority decision to grant permission. The report, dated the 09/01/2018, considered that the proposed development was compatible with the National Broadband Plan and was therefore considered that no development contribution should apply. This element of the report was amended by the Senior Executive Planner on the 12/01/2018 to include the condition requiring the payment of the development contribution.
- The report also included screening for Appropriate Assessment.

### 3.2.2. Other Technical Reports

None noted.

### **3.3. Prescribed Bodies**

None noted.

### **3.4. Third Party Observations**

None noted.

## **4.0 Planning History**

Permissions in the vicinity of the site relate to developments within and for the Retail Park and for the adjacent tennis club. No relevant planning history.

## **5.0 Policy Context**

### **5.1. National Policy**

- Telecommunications Antenna and Support Structures – Guidelines for Planning Authorities 1996.
- DoEHLG Circular Letter PL07/12 - The Circular referred to the then Draft Guidelines for Development Contribution Schemes, and the requirement that all future Development Contribution Schemes must include waivers for broadband infrastructure provision.
- Development Contributions Guidelines for Planning Authorities -Department of the Environment, Community and Local Government January 2013 – Chapter 2 of the Guidelines notes that planning authorities are required to include waivers for broadband infrastructure (masts and antennae).

### **5.2. Development Plan**

5.2.1. The North Tipperary County Development Plan 2010 (as varied) is the relevant policy document pertaining to this appeal.

Section 9.9 of the plan deals with Communications, with Section 9.9.2 dealing with Telecommunications Infrastructure. Policy TI14 deals with Telecommunications.

Chapter 10 of the Plan deals with Development Management Guidelines where Section 10.12.5 deals with Satellite Dishes and Telecommunications apparatus.

5.2.2. The Nenagh Town & Environs Development Plan, 2013-2019, as varied is also relevant in this instance and the subject site is zoned for commercial development in this town plan.

Chapter 5 of the plan deals with Town Centre Strategy and the Economy and section 5.10 deals with Telecommunications.

Policy ECON10: Telecommunications Apparatus states as follows:

It is the policy of the Councils' to achieve a balance between facilitating the provision of telecommunication services and sustaining residential amenities and environmental quality. In consideration of telecommunications masts, antennae and ancillary equipment, the Councils' will have regard to the following:

- a) the visual impact of the proposed equipment on the natural or built environment;
- b) the potential for co-location of equipment on existing masts
- c) the proximity of ICT equipment and schools, hospitals and residential areas.

Chapter 9 deals with Development Management Standards and Design Guidelines where section 9.13 deals with Telecommunications Infrastructure.

### 5.3. **Development Contribution Scheme 2015-2019**

The Development Contribution Scheme was adopted on the 12<sup>th</sup> January, 2015, came into effect on the 1<sup>st</sup> March, 2015 and will be valid until the 31<sup>st</sup> December, 2019. The Scheme identifies Class 22 as the provision of a telecommunications mast and Class 23 as the provision of telecommunications antennae, dish and other apparatus/equipment for communications purposes.

Section 10 of the Scheme deals with Exemptions and Reductions, and provides that

Any new development i.e. additions/attachments etc. will be subject to development contributions. Where masts and antennae, dish and other

apparatus/equipment for communication purposes form part of the National Broadband Plan or a subsequent Government endorsed initiative as defined by the Department of Communication, Energy and Natural Resources (DCENR) they will not be subject to development contributions. Development Contributions will be waived for co-located antennae, dish and other apparatus/equipment for communication purposes. In the case of broadband 'only' providers, subject to such operators demonstrating to the satisfaction of the Planning Authority that their infrastructure provides services to customers who would not otherwise be able to avail of an adequate broadband service such infrastructure will not attract development contributions.

#### **5.4. Natural Heritage Designations**

The subject site is not located within any designated site. The closest Natura 2000 site lies approximately 10km to the north of the Slivermine Mountains SAC, Site Code 000939 and a similar distance to the south east of the site, being Lough Derg (Shannon) SPA, Site Code 004058.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

This is a first party appeal against the inclusion of condition 5, which requires the payment of a development contribution in the sum of €27, 200. The grounds of appeal are summarised as follows:

- It is considered that the application of the 'broadband infrastructure' exemption contained within the development contribution scheme are applicable to this development.
- The development constitutes 'equipment for communication purposes that form part of the National Broadband Scheme, and should be exempt from the requirement to pay a development contribution.
- It is considered that the terms of the development contribution scheme have been incorrectly applied and that the development constitutes a mast, antennae and other apparatus / equipment for communication purposes that

form part of an endorsed initiative, following from the National Broadband Scheme which ended after a 68 month operation period in August 2014.

- The infrastructure will be made available to other service providers in accordance with condition 3 of the grant of permission.
- There is history where the Board adjudicated on a similar case in Co. Kilkenny, PL10.248622 refers.

It is requested that condition 5 be removed.

## 6.2. Planning Authority Response

None

## 6.3. Observations

None

## 7.0 Assessment

7.1. This assessment relates to a first party appeal under S48(10) of the Planning & Development Act, 2000 as amended. The first party has appealed condition no. 5 of the decision of Tipperary County Council to grant permission for the proposed development. S.48(10)(b) of the Act provides that an appeal may be brought to the Board where an applicant for permission under section 34 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.

7.2. Section 48(10)(c) states that where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of the planning authority is brought under Section 37, the planning authority shall make the grant of permission as soon as may be after expiration of the appeal period, provided the appellant furnishes adequate security for the payment of the full amount of the contribution as specified in the condition.

7.3. In considering the appeal, I note that the Board is bound by the terms of the adopted Development Contribution Scheme and Supplementary Development Contribution Scheme and cannot deviate from same. The merits or appropriateness of any

adopted Development Contribution Scheme is not open for interpretation by the Board as referenced in Cork City Council –v- An Bord Pleanala (2006). Rather, the Board is required to assess whether the terms of the scheme, as written, have been correctly applied.

- 7.4. The proposed development seeks the construction of a telecommunications mast with associated antennae and transmission dish, equipment units and ancillary developments. Condition 5 of Tipperary County Councils decision to grant requires the payment of €27,200 as a development contribution in accordance with the Councils Development Contribution Scheme, 2015-2019. The calculation of this amount is provided on page 3 of this report.
- 7.5. The Development Contribution Scheme was adopted on the 12<sup>th</sup> January, 2015, came into effect on the 1<sup>st</sup> March, 2015 and will be valid until the 31<sup>st</sup> December, 2019. The Scheme identifies Class 22 as the provision of a telecommunications mast and Class 23 as the provision of telecommunications antennae, dish and other apparatus/equipment for communications purposes.
- 7.6. Section 10 of the Scheme deals with Exemptions and Reductions, and provides that Any new development i.e. additions/attachments etc. will be subject to development contributions. Where masts and antennae, dish and other apparatus/equipment for communication purposes form part of the National Broadband Plan or a subsequent Government endorsed initiative as defined by the Department of Communication, Energy and Natural Resources (DCENR) they will not be subject to development contributions. Development Contributions will be waived for co-located antennae, dish and other apparatus/equipment for communication purposes. In the case of broadband 'only' providers, subject to such operators demonstrating to the satisfaction of the Planning Authority that their infrastructure provides services to customers who would not otherwise be able to avail of an adequate broadband service such infrastructure will not attract development contributions.
- 7.7. From the first line of the above text, it would appear that the proposed development should be subject to a development contribution. However, the following sentences clearly provide for an exemption where masts and antennae, dish and other apparatus/equipment for communication purposes form part of the National



Broadband Plan or a subsequent Government endorsed initiative as defined by the Department of Communication, Energy and Natural Resources (DCENR) they will not be subject to development contributions. The applicant submits that the proposed development constitutes 'equipment for communication purposes that form part of the National Broadband Scheme, and should be exempt from the requirement to pay a development contribution'.

7.8. The National Broadband Plan seeks to change the broadband landscape in Ireland through a combination of commercial and State led investment, and that the purpose of the Report of the Mobile Phone and Broadband Taskforce is to deliver the Plan in the shortest time possible time. In terms of the proposed development, I am satisfied that this Plan and report from the taskforce comprise Government endorsed initiative as defined by the Department of Communication, Energy and Natural Resources (DCENR). In this regard, I am satisfied that the appellant has presented a reasonable justification for the proposed infrastructural development and that the exemptions provided for in Tipperary County Councils Development Contribution Scheme can be applied.

7.9. I am satisfied that the Development Contribution Scheme has **not** been correctly applied.

7.10. There are no issues of a Special Development Contribution arising in this case.

## 8.0 **Recommendation**

8.1. It is recommended that Condition 5 of the grant of permission be REMOVED, on the basis that the terms of the Development Contribution Scheme, 2015-2019 have not been properly applied.

## 9.0 Decision

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 had not been properly applied in respect of condition number 5 and directs that the said Council to REMOVE condition number 5 and the reasons therefor.

## 10.0 Reasons and Considerations

Having regard to

- a) the provisions of the Tipperary County Development Contribution Scheme 2015-2019, which includes an exemption for 'masts and antennae, dish and other apparatus/equipment for communication purposes form part of the National Broadband Plan or a subsequent Government endorsed initiative as defined by the Department of Communication, Energy and Natural Resources (DCENR) they will not be subject to development contributions', and
- b) the information submitted in support of this appeal,

the Board considered based on the evidence submitted, that the proposed development constitutes equipment for communications purposes that form part of the National Broadband Scheme, or a subsequent endorsed initiative as defined by the Department of Communication, Energy and Natural Resources, and that the terms of the Development Contribution Scheme have not been properly applied.

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A. Considine  
Planning Inspector  
3<sup>rd</sup> May, 2018