



An
Bord
Pleanála

Inspector's Report ABP-301130-18

Development	Permission to construct a new 30m high telecoms lattice support structure carrying antennas and transmission dish with associated equipment units, security fencing and access track
Location	Cormoy, Newbliss, Co. Monaghan.
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	17/593
Applicant(s)	Three Ireland (Hutchinson) Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party against conditions
Appellant(s)	Three Ireland (Hutchinson) Limited
Observer(s)	None
Date of Site Inspection	12 th June 2018
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.0225 ha, is located in the townland of Cormoy, c. 1.6km north east of Newbliss village, Co. Monaghan. It is an elevated greenfield site on the southern side of a local road, which currently forms part of a larger agricultural field. A c. 6m high wooden pole with equipment attached to it is currently within the site, and a larger telecommunications support structure is currently located on the opposite (northern) side of the local road from the appeal site. The closest houses to the appeal site are c. 300m distant.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a 30m high lattice-type telecommunications support structure carrying antennae and transmission dishes, and associated equipment units, 2.4m high security fencing and 2.5m wide access track.
- 2.2. The equipment comprises 3 No. 2.5m high panel antennae and 1 No. 0.6m radio transmission link dish with associated cabinets in a 15m x 15m compound.
- 2.3. The application was accompanied by a planning cover letter, a letter of consent from the landowner, photomontages and an RF Technical Justification Report. The planning cover letter states that the proposed development will provide Three Ireland customers with improved voice (2G), data (3G) and new broadband (4G) services in the Newbliss area.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission and Condition 1, which forms the subject of this appeal, states:
 - (a) The developer shall pay to Monaghan County Council a sum of €10,420 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) No works shall commence until payment of the development contribution is made in full, or until Monaghan County Council has agreed in writing to a schedule of phased payments of the sum.

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

- Site is elevated but is not considered to be within a fragile or sensitive landscape.
- The site is not a designated site and there are no scenic routes located within close proximity to the site.
- The existing mast is not capable of supporting the latest wireless technology.
- The proposed development will be visible from various vantage points and will read with the existing Vodafone mast. The site is within a predominantly rural area and will not affect the setting of the nearby Newbliss village.
- No objections to the established access arrangements to this site.
- No sites of archaeological interest/protected structures located within 100m of the site.
- It is considered acceptable to locate the proposed mast adjacent to the existing mast.
- Site is not located within the Slieve Beagh SPA.

- Mast will provide a valuable contribution to the telecommunications infrastructure of the area.
- The mast will not be used solely for broadband purposes and consequently in accordance with the General Development Contribution Scheme, a contribution of €10,420 will be imposed.
- By virtue of the nature of the development and the distance from Natura 2000 sites, there will not be any significant effects on the integrity of the Natura 2000 sites. Stage 2 AA not required.

3.3. Other Technical Reports

- Environment Section: No comment.
- Environmental Health Officer: No objections.

3.4. Prescribed Bodies

- Irish Aviation Authority: No observations.

3.5. Third Party Observations

- None.

4.0 Planning History

4.1. Appeal Site

4.1.1. I am not aware of any planning history on the appeal site.

4.2. Surrounding Area

4.2.1. I am not aware of any recent relevant planning history in the surrounding area.

5.0 Policy Context

5.1. Monaghan County Development Plan 2013-2019

5.1.1. 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.

5.2. Development Contributions Guidelines for Planning Authorities, 2013

5.2.1. Section 2, 'Supporting Economic Development', states that planning authorities are required to include a series of waivers and reductions in their development contribution schemes. The list includes "waivers for broadband infrastructure (masts and antennae)".

5.3. Department of the Environment, Community and Local Government Circular Letter PL07/12, October 2012

5.3.1. The circular letter revises elements of the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities 1996. It notes that the Guidelines pre-dated the introduction of development contribution schemes and states that the then draft Development Contributions 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.

5.4. Monaghan County Council General Development Contributions Scheme 2013-2019

5.4.1. Section 18 states that the Planning Authority "may allow for full or partial exemptions from payment at its discretion. The onus shall be on the applicant to demonstrate that the development would be of a type which would qualify for any exemptions or reductions set out below."

- 5.4.2. Subsection (e) states that there will be a “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.”
- 5.4.3. Appendix 3 sets out the levels of general development contribution payable. Development category 3(n) relates to telecommunications and states that the amount of contribution is €10,000 per mast and €5,000 per antenna installed on existing mast.
- 5.4.4. Section 20 makes provision for these rates of contribution to be indexed in accordance with changes to the Whole Price Index for Building and Construction published by the Central Statistics Office. The current rate of contribution is €10,420 per mast and €5,230 per antenna installed on existing mast.

5.5. **Natural Heritage Designations**

- 5.5.1. The appeal site is not located within or in the immediate vicinity of any site with a natural heritage designation. The closest such sites are the Kilroosky Lough Cluster SAC (Site Code 001786), c. 8km to the north west and Slieve Beagh SPA (Site Code 004167), c. 14.4km to the north.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The appeal is a first party appeal, seeking the removal of Condition 1 of the Planning Authority’s decision, which requires the payment of a development contribution. The issues raised in the appeal can be summarised as follows:
- The terms of the Development Contribution Scheme have not been properly applied.
 - Section 18(e) of the Scheme provides 100% exemption for 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.

- The Development Contributions Guidelines for Planning Authorities are clear in their direction to provide waivers for broadband infrastructure.
- The application of the broadband infrastructure exemption in this instance is a reasonable one.
- The Report of the Mobile Phone and Broadband Taskforce contains 40 actions to eliminate barriers to timely development of communications infrastructure. The report acknowledges the importance of private investment in such infrastructure.
- The proposed development qualifies for the exemption as it is broadband infrastructure and the new development does not place a demand for new, upgraded or additional infrastructure or services.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- The merits of the terms of the Development Contribution Scheme or the amount of contribution applied to types of development are not for consideration as there are matters addressed during the formulation of the scheme.
- The waiver incorporated within section 18 of the Development Contributions Scheme is in keeping with the Development Contributions Guidelines for Planning Authorities and the Report of the Mobile Phone and Broadband Taskforce.
- It has been confirmed by the Department of Housing, Planning, Community and Local Government and the Department of Communications, Climate Action and Environment that Monaghan County Council is one of the 26 local authorities that has ceased applying charges for broadband infrastructure, but that charges can still be levied on telecommunications development that is not solely for broadband provision.
- The justification for the planning application states that the development is required to provide/improve coverage for voice calls as well as 2G, 3G and 4G services. Given that the development is not solely for broadband

infrastructure, the waiver within Section 18 is not applicable and the contribution applied under Condition 1 is warranted.

6.3. **Observations**

- None.

6.4. **Appellant's Response to Planning Authority Response**

- None.

7.0 **Assessment**

7.1. **Nature of Appeal**

- 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 €10,420 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.
- 7.2.2. Section 18(e) of the Scheme states that there will be a "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" [my emphasis.]

- 7.2.3. The applicant, in Section 2.0 of the planning cover letter submitted with the planning application, stated that “the proposed development is required in order to provide Three Ireland customers with improved voice (2G), data (3G) and broadband (4G) services”. Similar statements are also made in Sections 3.0 and 15.0 of the cover letter. The RF Technical Justification Report submitted with the planning application states that “the proposed site will improve indoor and outdoor 2G, 3G and 4G services in the village of Newbliss”, and that the site is required “to provide adequate coverage, voice speech quality and high speed mobile internet services to Newbliss”.
- 7.2.4. The applicant makes reference to the Development Contributions Guidelines for Planning Authorities (2013) and the Report of the Mobile Phone and Broadband Taskforce 1 (2016). The Guidelines require Planning Authorities to include a waiver for “broadband infrastructure (masts and antennae)” in their Development Contribution Schemes. The Planning Authority contends that the waiver incorporated in Section 18(e) of their Scheme is in keeping with the Guidelines and the Report, and that charges can still be levied on telecommunications development that is not solely for broadband provision.
- 7.2.5. With regard to the Mobile Phone & Broadband Taskforce, I note that Quarterly Progress Report Q1 2018 states that the Department of Housing, Planning and Local Government (DHPLG) “is preparing an update to the 2013 Development Contribution Guidelines to extend the current waivers for broadband infrastructure to also incorporate mobile phone infrastructure. It is proposed to revise the Guidelines by way of Circular letter issued to planning authorities under Section 28 of the Planning and Development Act 2000...The Circular letter is at an advanced stage of development and it is intended that the finalised Circular will be issued in Q2 2018.”
- 7.2.6. Notwithstanding the above, as this is an appeal under section 48(10)(b), the Board is restricted to considering whether the terms of the adopted Development Contribution Scheme have been properly applied. Having regard to the information submitted by the applicant in support of their planning application, as outlined above, it is clear to me that while the proposed development includes the provision of broadband infrastructure, it is not solely for the provision of broadband infrastructure.
- 7.2.7. Since the proposed development is not solely for the provision of broadband infrastructure, I consider that it does not satisfy the exemption criteria set out in

Section 18(e) of the Scheme, and I therefore consider that the terms of the Scheme were properly applied and that the Planning Authority acted correctly in attaching Condition No. 1, which requires the payment of a development contribution.

7.3. Precedent

- 7.3.1. I note that the Board has recently dealt with a number of similar appeals against development contributions in respect of telecommunications and broadband infrastructure (e.g. ABP-300904-18; PL10.248622). The Development Contribution Schemes in both those cases, which related to Counties Offaly and Kilkenny respectively, included an exemption for infrastructure that “form part of the National Broadband Scheme”. In both cases the Board considered that the terms of the Scheme had not been properly applied, and directed the Planning Authority to remove the relevant Condition.
- 7.3.2. However, it is of note that neither Scheme specified that such infrastructure must be “solely” related to broadband, as per the Monaghan Scheme, and I therefore do not consider that they are directly comparable to the subject appeal.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and the distance 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. I consider that the terms of the Monaghan County Council General Development Contributions Scheme 2013-2019 have been properly applied and I therefore recommend that the Board direct Monaghan County Council to ATTACH Condition No. 1 for the reason set out below.

9.0 Reasons and Considerations

Having regard to

- (a) The provisions of the Monaghan County Council General Development Contributions Scheme 2013-2019, which includes an exemption for telecommunications infrastructure which is solely for the provision of broadband infrastructure; and
- (b) The submissions made in this appeal;

the Board considered, based on the evidence submitted, that the proposed development does not constitute telecommunications infrastructure which is solely for the provision of broadband infrastructure and that it cannot, therefore, avail of the abovementioned exemption. It is therefore considered that the terms of the Development Contribution Scheme have been properly applied.

Niall Haverty
Planning Inspector

2nd July 2018