



An
Bord
Pleanála

Inspector's Report ABP-302609-18

Development	Erection of 36m high, multi-user, lattice, telecommunications structure, carrying antenna and dishes.
Location	Brittas townland, Thurles, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	18600549
Applicant(s)	Signal Infrastructure Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party
Appellant(s)	Signal Infrastructure Ltd.
Observer(s)	None
Date of Site Inspection	None undertaken
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.03ha, is located approximately 0.3km to the east of the N62 National Secondary Route linking Thurles to the south with Templemore to the north – within rural Co. Tipperary. The area is rural; a mosaic of fields bounded by hedgerows. It is on or about the 100m contour. The N62 and the Dublin to Cork/Limerick railway line are to the west. The Suir River is located approximately 0.5km to the north and 1.0km to the east. Access to the site is from a cul de sac laneway (L96206) off the N62. There is grass growing within the centre of the laneway – as per photographs submitted.
- 1.2. The site itself is located immediately to the south of the L96206 road, in the corner of a grassed field. There is a roadside boundary hedgerow, within which a gap is to be made to form the vehicular access. Sight distance to the west is stated to be 100m; whilst to the east, it is stated to be 40m.

2.0 Proposed Development

- 2.1. Permission sought on 2nd May 2018, to erect a 36m high, triangular, lattice communications mast – containing antennae and dishes – all enclosed within a compound containing equipment containers for the proposed multiple users. The compound is to be surrounded by a 2.4m high palisade fencing. A new access from the public road, and a short track to link it with the mast, are also proposed. Surface water is to be discharged to a soakway.
- 2.1.1. The application was accompanied by the following documentation of note-
- Technical Justification Report from Vilicom – dated 28th March 2018.
 - Declaration of Conformity with ICNIRP Public Exposure Guidelines in relation to exposure to non-ionizing radiation.
 - Planning Report from 4 Site – indicating development will serve multiple operators. The site will be used for mobile phone connection and wireless broadband.

- Letter of consent, to the making of the application, from the landowner.
- Photomontages from 9 no. locations within 1.0km of the proposed mast.
- OS Discovery Series extract map: showing existing masts within 5km radius of the proposed site.

2.2. Following a request for additional information, revised proposals were received on 1st August 2018, in relation to road access, sightlines at the entrance (reduced by reason of the fact that adjoining landowner will not consent to removal of hedgerow).

3.0 Planning Authority Decision

By Order dated 27th August 2018, Tipperary County Council issued a Notification of decision to grant planning permission subject to 6 no. conditions. Condition 6 stated-

A payment of a financial contribution shall be paid to the Planning Authority in respect of public infrastructure and facilities benefitting 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 €17,200.00 which is calculated as follows:

Telecommunication Mast		1.00	€17,200.00
Total	€17,200.00	Total	€17,200.00

€17,200.00 is payable prior to commencement of the proposed development.

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

4.0 Planning History

None referred to.

5.0 Policy Context

5.1. Development Plan

The relevant document is the North Tipperary County Development Plan 2010-2016 (Edition: December 2017).

- The site is not zoned.
- Section 9.9.1 deals with Broadband Infrastructure, whilst section 9.9.2 deals with Telecommunications Infrastructure. Specific Objective SO09-6 states- “It is an objective of the Council to work with and support key stakeholders to secure the implementation of the National Broadband Plan and seek to ensure that fast and effective broadband facilities are available in all parts of the country”.
- The site is within the Templemore Plains Landscape Character Area (LCA). The landscape sensitivity is ‘Low’, and the landscape capacity is ‘High’.

5.2. Telecommunications Antenna & Support Structures – Guidelines for Planning Authorities, 1996

These Guidelines are of relevance in relation to siting of masts.

5.3. Department of Environment, Heritage and Local Government – Circular Letter PL07/12

The Circular Letter 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.

5.4. Development Contributions Guidelines for Planning Authorities, 2013 - Department of Environment, Community and Local Government

Chapter 2 of the Guidelines notes that planning authorities are required to include waivers for broadband infrastructure (masts and antennae).

5.5. Natural Heritage Designations

The site is neither within nor immediately abutting any nature conservation area. The closest such is the Lower River Suir SAC (Site code 002137) – located some 7.0km to the south as the crow flies.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal from *4 Site*, agent on behalf of the applicant, Cignal Infrastructure Ltd, received by An Bord Pleanála on 21st September 2018, can be summarised in bullet point format as follows-

- Cignal Infrastructure Ltd. have acquired the telecommunications infrastructure of Coillte Teoranta.
- The National Broadband Scheme is to be rolled out using a combination of commercial and State-led investment. The development forms part of the National Broadband Plan. The site is within an ‘amber’ area, identified by the Department as a target area for state intervention of the National Broadband Plan. Broadband can be supplied by commercial operators.
- Location is the primary determinant in quality of broadband communications.
- The site has been designed to facilitate multi-users. This will bring significant improvement for voice and data transmission.
- The 2013 Development Contribution Guidelines for Planning Authorities require that planning authorities include waivers for broadband infrastructure (masts and antennae) at Chapter 2 – page 11.
- The Tipperary Development Contribution Scheme 2015-2019, states- “where masts and antennae, dish or 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 or other apparatus/equipment for communication purposes”.

- The revision of Development Contribution Guidelines in respect of Telecommunications Infrastructure (Department of Housing, Planning and Local Government) Circular Letter PL 03/2018, now includes a requirement that waivers for broadband infrastructure (masts and antennae) be extended to include mobile phone infrastructure. Local Authorities are requested to update relevant references to their Development Contribution Schemes at the next available opportunity.
- Classes 22 & 23 of the Development Contribution Scheme relate to telecommunications masts and antennae/dishes/equipment.
- Section 10.0 of the Scheme includes exemptions.
- The Board has previously removed financial contributions for masts – ref. ABP-300904-18 and PL 10.248622: the applicant’s in both instances being Signal Infrastructure Ltd.

6.2. Planning Authority Response

There is no response from Tipperary County Council to the grounds of appeal submitted.

6.3. Board Refers 1st Party Appeal to 2nd Party for Comment

- 6.3.1. By letter dated 28th November 2018, An Bord Pleanála referred the 1st Party appeal for comment to the Planning Authority – requesting comment on or before 18th December 2018.
- 6.3.2. There was no response received.

7.0 Assessment

- 7.1. The issue of this appeal relates to the implementation of the Tipperary County Council Development Contribution Scheme 2015-2019. Contributions are payable in respect of a series of class of development, amongst which is-

Class 22 – The provision of a telecommunication mast.

Class 23 – The provision of telecommunications antennae, dish and other apparatus/equipment for communication purposes.

7.2. Section 10 deals with ‘Exemptions and Reductions’, and states *inter alia*-

“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”.

7.3. Section 12.0 states that the rate of contribution for Class 22 is €17,200 per mast and that the rate of contribution for Class 23 per item of telecommunications equipment is €2,500. In this instance the PA attached a requirement to pay a development contribution for Class 22 only - €17,200 – as per condition no. 6 of the Notification of decision to grant planning permission.

7.4. The 1st Party appeal is against condition no. 6 only. Section 48 of the Planning and Development Act, 2000, as amended, states as follows-

(1) A planning authority may, when granting planning permission under *section 34*, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

(10)(a) Subject to *paragraph (b)*, no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.

(10)(b) An appeal may be brought to the Board where an applicant for permission under *section 34* considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

(10)(c) Notwithstanding *section 34(11)*, where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of the planning authority is brought by any other person under *section 37*, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal in accordance with *paragraph (b)* furnishes to the planning authority security for payment for the full amount of the contribution as specified in the condition.

The effect of section 48(10)(c) is to restrict the Board to consideration of the condition appealed, and the Board cannot look at the appeal *de novo*. The applicant may already have given the PA security for payment of the amount, and construction may have commenced, by the time the Board comes to adjudicate on the appeal now before it.

- 7.5. The appellant notes that the proposed development constitutes equipment for communication purposes that form part of the National Broadband Scheme, as defined by the Department of Communication, Energy and Natural Resources; and further notes that the Development Contribution Guidelines for Planning Authorities (2013), require that planning authorities include waivers for broadband infrastructure (mast and antennae).
- 7.6. The National Broadband Plan (formerly identified as National Broadband Scheme) aims to improve broadband availability nationwide, through a combination of commercial and state-led investment. I would be satisfied that the applicant company is providing equipment that would constitute equipment for communication purposes that forms part of the National Broadband Scheme, as defined by the Department of Communication, Energy and Natural Resources. In this instance, the Development Contribution Scheme clearly provides for an exemption under Section 10.0, for masts and antennae, dish and other apparatus/equipment for communication purposes which form part of the National Broadband Plan. The Planning Authority has not justified the failure to apply the exemption allowed for in

the Scheme. I would consider that the Planning Authority failed to correctly apply the terms and conditions of the Development Contribution Scheme in this instance.

8.0 Recommendation

I recommend that the planning authority be directed to remove condition no. 6.

9.0 Reasons and Considerations

Having regard to:

- (a) the provisions of the Tipperary County Development Contribution Scheme 2015-2019, which states- “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”, and
- (b) the submission made in the appeal,

it is considered that the proposed development constitutes a facility for communications purposes that forms 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.

Michael Dillon,
Planning Inspectorate

21st December 2018.