



An
Bord
Pleanála

Inspector's Report ABP-303814-19

Development	Retention of an existing 24 metre high telecommunications support structure with antennas, equipment container and associated equipment within a fenced compound and access track.
Location	Cleavry, Castlebaldwin, Co Sligo
Planning Authority	Sligo County Council
Planning Authority Reg. Ref.	192
Applicant(s)	Vodafone Ireland Ltd.
Type of Application	Retention Permission.
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Vodafone Ireland Ltd.
Observer(s)	None.
Date of Site Inspection	29 th April 2019.
Inspector	Sarah Lynch

1.0 Site Location and Description

- 1.1. The appeal site is located to the north west of Castlebaldwin in an upland position overlooking Cleavry Lake. The site is accessed via a gravel track from the adjacent local road.
- 1.2. The existing mast infrastructure is located within an existing enclosure bounded by a mix of palisade fencing, wire mesh and hedging. The compound contains all ground equipment associated with the mast and a storage container. The site is relatively exposed and located in an undeveloped landscape with views of the surrounding hills.

2.0 Proposed Development

- 2.1. It is proposed to retain the existing 24 metre high telecommunications support structure, antennas, and associated equipment and compound.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted permission for retention of the development subject to 4 conditions. Of relevance is condition no. 4 as follows:

The developer shall pay the sum of €1,440 to Sligo County Council as a contribution towards expenditure that was/or that is proposed to be incurred by the local authority in respect of public infrastructure and facilities benefitting development in the area of the Authority as provided for in the current (2018) Development Contributions Scheme for Sligo County Council made in accordance with Section 48 of the Planning and Development Act 2000, (as amended). The contribution shall be paid within six months of the date of the grant of the subject permission or in such phased payments as may be agreed in writing with the planning authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planners report is consistent with the decision of the planning authority.

3.2.2. Other Technical Reports

- None

3.3. Prescribed Bodies

- Irish Aviation Authority – no comment.

3.4. Third Party Observations

- None

4.0 Planning History

- P13/224 Permission was **granted** for retention of existing mast and associated equipment and compound.
- PL08/95 Permission was granted for the retention of existing mast and associated equipment and compound.
- PL02/660 Permission was granted for the retention of mast and associated equipment and compound.
- PL/97/148 Permission was granted for construction of mast and associated equipment and compound.

5.0 Policy and Context

5.1. Development Plan

Sligo Development Plan 2017-2023

The site is located in the rural area on un-zoned lands

Sligo County Council Development Contributions Scheme 2018-2024

- Section 2.0 - Aim of the Development Contribution Scheme
 - When new development occurs, it impacts on the capacity of existing infrastructure thereby placing a greater demand on the services provided by a local authority. Accordingly, it is equitable that developers contribute

to the funding of essential physical and social infrastructure that support the implementation of development plans of local authorities.

- Section 10.0 - Exemptions and Reductions
 - The following categories of development will be exempted from the requirement to pay development contributions under the Scheme:
 - (g) Broadband Infrastructure (Masts and Antennas).

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

- Reference is made within Section 3 of the circular letter to the Guidelines on Development Contributions 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.

Development Contributions Guidelines for Planning Authorities, 2013

- It is reminded within these Guidelines 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.

5.2. Natural Heritage Designations

The site is located c. 1.7km north east of Bricklieve Mountains and Keishcorran SAC, c.2km west of the Lough Arrow SAC and SPA.

5.3. EIA Screening

- 5.4. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been submitted by Focusplus Ltd on behalf of Vodafone Ireland, the applicants are requesting that condition no. 4 of the permission is removed for the following reasons:

- 5 permissions have issued in relation to the development.
- Applicants have paid €15,000 under the 2013 permission.
- Precedent cases are identified in which the Board have removed such conditions.
- Circular PL07/12 recommends that levies are waived for facilitation of broadband infrastructure.
- The applicant is supplying infrastructure which supports mobile broadband.

6.2. Planning Authority Response

- No waivers of contributions apply to retention applications for telecommunications infrastructure under the current development contributions scheme. This is in line with the Development Contributions. Guidelines for Planning Authorities.
- The contributions were based on the floor area of the proposal and the use as a commercial development.

7.0 Assessment

- 7.1. This is an appeal against a financial contribution condition only attached to Sligo County Council's decision to grant permission for the retention of a 24m high telecommunications support structure carrying antennas and link dishes, together with ground-based equipment units and security fencing at Cleavry, Castlebaldwin, Co. Sligo.

- 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 4 requires the developer to pay a financial contribution of €1,440 in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority in accordance with the terms of the Sligo Development Contributions Scheme 2018. This has been broken down into types of development as follows:
- Roads and public infrastructure €576
 - General Recreational and community facilities and amenities €864.
- 7.4. It is contended by the applicant that a contribution of €15,000 has already been paid in relation to the development in 2013 under planning reference 13/224. The access infrastructure to the mast and compound is in situ as such no further work requirements arise from the development. It is therefore contended by the applicant that condition no. 4 is unreasonable.
- 7.5. Section 2 of the Development Contributions Guidelines is of relevance in this instance and states 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.’*
- 7.6. Sligo County Council in their submission have failed to acknowledge or reference the fact that the applicant has already made a substantial contribution in relation to the development. I note that this was not considered within the planners report for the application either. In the absence of any reference to the previously paid contribution and any justification for additional contributions in this context, I consider that condition no. 4 would be contrary to the provisions of the Development Contributions Guidelines as outlined above in that applicant has been double charged for the same development.

- 7.7. Section 3 of the Telecommunications Antennae & Support Structures (1996) & Circular letter PL 07/12 requires 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.
- 7.8. The Council within their submission to the appeal refer to Section 10 of the Sligo County Council Development Contributions Scheme in which it is stated that exemptions and reductions shall not apply to permissions for retention of development. It is contended by the Council that the application is a retention permission and as such the exemptions do not apply.
- 7.9. I consider that the application of this note within the contributions scheme in the case of a development where substantial contributions have already been paid to be contrary to the key tenets of both the circular and guidelines and as such I consider the imposition of condition no. 4 to be unjustified.

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 Sligo County Council Development Contribution Scheme for the area had not been properly applied in respect of Condition 4 and directs the said Council to REMOVE said condition.

9.0 Reasons and Considerations

1. The proposed development is for continuance of use of an existing telecommunications mast and mobile phone infrastructure where significant contributions have already been paid in relation to the development under planning reference P13/224. 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.

Sarah Lynch
Planning Inspector

29th May 2019