



An  
Bord  
Pleanála

## Inspector's Report

**ABP-303847-19**

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<b>Development</b>	To erect a new 39m multi-user telecommunications support structure
<b>Location</b>	Coillte Forest Castleshane, Castleshane Demesne, Castleshane, Co. Monaghan
<b>Planning Authority</b>	Monaghan County Council
<b>Planning Authority Reg. Ref.</b>	18558
<b>Applicant(s)</b>	Signal Infrastructure Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To grant.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Signal Infrastructure Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	6 <sup>th</sup> June 2019.
<b>Inspector</b>	Deirdre MacGabhann

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## 1.0 Site Location and Description

1.1. The appeal site lies c.6km to the east of Monaghan town, within Coillte lands forming part of Castleshane Demesne, Castleshane. Access to the site is from the minor county road, L54311, to the east of the site.

## 2.0 Proposed Development

2.1. The proposed development comprises the erection of a new 39m multi-user telecommunications support structure, with associated antennas, remote radio units, communication dishes, lighting, outdoor cabinet and enclosed security compound and site access. The development will provide voice and mobile broadband services in the area.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. The planning authority decided to grant permission for the development in February 2019 subject to 6 conditions. Condition no. 1 required the payment of a development contribution of €10,480.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- 30<sup>th</sup> January 2019 – Recommends a grant of permission and financial contributions in accordance with the General Development Contribution Scheme 2013-2019. Attached to the report is a Development Contribution calculation, based on category 3(n) Community, recreation and amenity infrastructure, for development type 'Telecommunications', €10,480 per mast/installation.

#### 3.2.2. Other Technical Reports

- N/A.

### 3.3. Prescribed Bodies

- N/A.

### 3.4. Third Party Observations

- None.

## 4.0 Planning History

- N/A.

## 5.0 Policy Context

### 5.1. National Guidelines

- National Planning Framework 2018.
- Telecommunications Antennae and Support Structures Guidelines for Planning Authorities, July 1996.
- Development Contribution Guidelines for Planning Authorities, January 2013.
- Revision of Development Contribution Guidelines in respect of Telecommunications and Infrastructure, Circular letter PL 03/2018.

### 5.2. Development Contribution Scheme

5.2.1. The current 'Monaghan Local Authorities General Development Contribution Scheme 2013 to 2019' requires a contribution of €10,000 per mast, for telecommunications development, towards the provision of community, recreation and amenity infrastructure (see attachments). Current indexed link charges are €10,420/mast.

5.2.2. Section 19(e), under Exemptions/Reductions, provides a 100% exemption from all 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The first party appeal is against condition no. 1 of the permission. Grounds of appeal are:

- The proposed site is designed to support 3G and 4G local and national broadband providers. It will bring significant improvement in the provision of mobile and broadband data services for the Castleshane area (townlands of Castleshane demesne, Lismenan, Kingorry, Tivavray, Greenmount and Lattigar and surrounding rural areas) and close a large coverage gap on the N2, R213 and R214.
- The development contribution required by condition no. 1 has been incorrectly imposed. The proposed structure should be exempted from the requirement to pay development contributions under section 19(e) - Exemptions/Reductions of the Monaghan Development Contribution Scheme, when set against and read in context of the provisions of the Development Contributions Guidelines for Planning Authorities 2103 and Circular PL 03/2018.
- The granted development is a standalone unmanned installation which will utilise an existing access and will be visited c.2-3 times/year for maintenance purposes only. It will not therefore place any demand for new, upgraded or additional infrastructure or services.
- The 2013 guidelines on Development Contributions require planning authorities to include waivers in their development contribution schemes for broadband infrastructure (masts and antennae). The proposed development is accommodating local and national broadband providers/operators with the intention of bringing significant improvements to the area in the provision of mobile and broadband data services. A broadband exemption, therefore, wholly applies to the development.
- Circular 03/2018 requires local authorities to update their development contribution schemes to provide a waiver for both mobile and broadband

telecommunications infrastructure, where these are being provided as part of a Government endorsed telecommunications strategy, plan or initiative.

- The proposed development forms part of the Government endorsed telecommunications strategy now known as the National Broadband Plan.
- In the light of the foregoing, in particular the directions of circular 03/2018, the development should be exempted from a requirement to pay a development contribution.
- The Board has concluded, for another telecommunications development (ABP-300904-18), that a 30m multi-user monopole telecommunications support structure, for voice and broadband services, formed part of a government endorsed national roll out of broadband service and that the terms of development contribution scheme had not been properly applied.

## 6.2. Planning Authority Response

6.2.1. The planning authority make the following response to the appeal:

- Section 7 of the Monaghan Development Contribution Scheme requires all planning permissions to be subject to a development contribution, where appropriate. The scheme also includes development contribution charges in respect of Community, Recreation and Amenity facilities, with a specific category for telecommunications (3(n)).
- The Scheme provides a waiver for the development **solely** of broadband (section 18).
- The Scheme was adopted prior to Circular PL 03/2018. The Monaghan County Development Plan 2019-2025 came into effect on the 1<sup>st</sup> April 2019 and as a result a new development contribution scheme is being drafted to ensure consistency with the Plan. The new Scheme will take account of Circular PL 03/2018 but in the absence of this, the current Scheme must be applied.
- The applicant implies that the development forms part of a government endorsed telecommunications strategy, now known as the National Broadband Plan. However, as this Plan has yet to be implemented the

County Council cannot rely on this assumption at this time. No evidence has been submitted by the applicant to support this argument.

- In the ABP case referred to by the appellant, the exemption in the Development Contribution Scheme referred to developments which form part of the National Broadband Scheme. The exemption in County Monaghan is for telecommunications development which is solely for the provision of broadband infrastructure. The proposed development provides for voice and broadband connectivity and therefore does not relate to this exemption. Circular PL 03/2018 requires operators to demonstrate that their infrastructure provides services to customers who would otherwise not avail of adequate mobile or broadband service, to avail of exemptions. This has not been demonstrated to the satisfaction of the planning authority.
- Assert that the development contribution scheme has been properly applied.

### 6.3. Observations

- None.

### 6.4. Further Responses

6.4.1. The appellant makes the following additional comments in response to the planning authority's comments on the appeal:

- The assessment of the appeal must also have regard to government policy since the planning authority's adoption of the Development Contribution Scheme, which have been issued with immediate effect.
- The appellant intends to install the required infrastructure to facilitate broadband provision in the area. This is in line with EU and national policy (National Broadband Plan), where State intervention is considered only as a last resort.
- The appellant provided coverage plots to the planning authority, demonstrating the current coverage hole/gap in Castleshane and the surrounding area.

## 7.0 Assessment

- 7.1. This appeal relates to a single matter, the application of Monaghan County Council's Development Contribution Scheme and is made under section 48(10)(b) of the Planning and Development Act, 2000 (as amended).
- 7.2. The current County Monaghan Development Contribution Scheme was adopted on the 1<sup>st</sup> December 2014, with its latest revision in 2018 setting out index linked increases in charges. In section 19 it sets out certain Exemptions/Reductions and states '*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*'. Listed under item (e) is a 100% exemption from all development charges in relation to telecommunications development which is **solely** for the provision of **broadband infrastructure**, where new development does not place a demand for new, upgraded or additional infrastructure or services.
- 7.3. In this instance the proposed development is a single mast, accessed from a local county road and generating few vehicle trips per annum. I would accept therefore that it does not place a demand for new, upgraded or additional infrastructure or services. However, it is proposed to provide both broadband and mobile infrastructure and is not strictly consistent with the requirements of the Development Contribution Scheme for waiver. Notwithstanding this, I would comment as follows.
- 7.4. In 2013, the Government's Guidelines for Planning Authorities on Development Contributions required planning authorities to include in their development contribution schemes certain waivers, to strike an appropriate balance between funding of public infrastructure and the need to encourage economic activity. These include waivers for broadband infrastructure (masts and antennae). I note that the Monaghan Development Contribution Scheme 2014, included this specific provision.
- 7.5. Subsequently, in July 2018, the Government's circular letter, PL 03/2018, issued under section 28(1C) of the Planning and Development Act, 2000 (as amended) updated the above guidelines. It required that waivers for broadband infrastructure (masts and antennae) be extended to include mobile phone infrastructure in the following circumstance and for Schemes to be '*updated accordingly as soon as possible*'. The circular states:



*'This waiver shall apply to any telecommunications infrastructure, both mobile and broadband, being deployed as part of a Government endorsed telecommunications strategy, plan or initiative. Where mobile or broadband operators demonstrate 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 mobile or broadband service, such infrastructure shall not attract development contributions. Furthermore the waiver applies to masts, antennae, dishes and other apparatus or equipment being installed for such communication purposes'.*

- 7.6. The current Monaghan Development Contribution Scheme is currently inconsistent with the above requirement. However, as stated by the planning authority, it is currently being reviewed in the context of the recently adopted Monaghan County Development Plan 2019 to 2025 and will inevitably be updated to comply with Circular PL 03/2018, which is issued under section 28 of the Act.
- 7.7. Under section 48(10)(b) of the Planning and Development Act 2000 (as amended) the Board has jurisdiction only to consider whether a Development Contribution Scheme has been properly applied. In this instance, the Monaghan Development Contribution Scheme provides scope for partial or full exemptions, at the discretion of the planning authority. The proposed development comes forward within a statutory policy context that requires Development Contribution Schemes to be altered to provide a waiver for any telecommunications infrastructure, mobile or broadband, being deployed as part of a Government endorsed telecommunications strategy, plan or initiative. I consider therefore, that the Scheme provides for an exemption for payment and that in these very particular circumstances, such an exemption is warranted.
- 7.8. I also would accept that the proposed development provides broadband/mobile infrastructure in an area where there is an absence of coverage and is deployed as part of high-level Government planning policy (section 2.2, National Planning Framework), which seeks to improve local connectivity in rural Ireland. It is also consistent with the sector specific National Broadband Plan which seeks to provide access to high speed broadband for all (minimum of 30Mbps), with delivery through a combination of commercial and State led investment.

7.9. The appellant refers to Board case, ABP-300904-18, an appeal in respect of a development contribution that was levied in respect of a telecommunications mast granted permission in County Offaly, providing both voice and broadband telephony. The then County Development Contribution Scheme provided a 100% exemption for broadband infrastructure, which form part of the National Broadband Scheme. The Board decided that the development contribution levied on a telecommunications mast, was not warranted as the Offaly Development Contribution Scheme included an exemption for Broadband infrastructure, which had not been properly applied. The Board's decision was made in January 2018 and pre-dated Circular PL 03/2018. Any decision by the Board to remove condition no. 1 of the grant of permission in this instance, would be consistent with their decision in this aforementioned case (ABP-300904-18).

## 8.0 Recommendation

8.1. Having regard to the foregoing, I recommend that Monaghan County Council be directed to remove condition no. 1 from the grant of permission on the grounds that the terms of the Development Contribution Scheme 2013 to 2019 have not been properly applied.

## 9.0 Reasons and Considerations

Having regard to government policy in respect of Development Contributions, as expressed in Circular PL 03/2018, and the exemptions provided for in section 19 and 19(e) of the Monaghan Local Authorities General Development Contribution Scheme 2013-2019, it is considered that the terms of the Development Contribution Scheme have not been properly applied.

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Deirdre MacGabhann

Planning Inspector

13<sup>th</sup> June 2019