



An
Bord
Pleanála

Inspector's Report ABP-303969-19

Development	Retention of 25m high telecommunications monopole, telecommunications equipment and fencing
Location	Cools, Headford, Killarney, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/1247
Applicant(s)	EIR
Type of Application	Retention Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	EIR
Observer(s)	None
Date of Site Inspection	21 st May, 2019
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The telecommunications site is located on the west side of a local road in rural area approximately 15km south-east of the town of Killarney in County Kerry. There is an established 25m high monopole on the site and a fenced equipment compound. There is extensive one-off housing in this general area.

2.0 Proposed Development

- 2.1. The proposed development seeks the retention of the 25m high telecommunications ABP Ref. PL 08.228598, together with telecommunications equipment and fencing.

3.0 Planning Authority Decision

3.1. Decision

On 20th February, 2019, Kerry County Council decided to grant permission for the proposed development subject to three conditions. Condition no. 3 was as follows:

- “3. *Within three months of the date of this permission, the developer shall pay a contribution of €15,000.00 to Kerry County Council (Planning Authority) in respect of Roads & Transport and Community & Amenity infrastructure benefiting the development.*

This contribution is broken down as follows:

<i>Roads & Transport</i>	<i>-</i>	<i>€7,500.00</i>
<i>Community & Amenity</i>	<i>-</i>	<i>€7,500.00</i>

The amount of this contribution is calculated in accordance with the Council's prevailing Development Contribution Scheme and may be increased from January 1st 2020 and annually thereafter (unless previously discharged) in line with the Wholesale Price Indices – Building and Construction (Capital Goods) as published by the Central Statistics Office unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.

Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities

benefiting the development, as provided for in the Councils prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act (as amended) and that the level of contribution payable should increase at a rate in the manner specified in that Scheme.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site’s planning history, development plan provisions, and the objections received. It was considered that the proposed retention is consistent with the objectives and policies of the County Development Plan. Regarding objections, it was submitted that there had not been any material change in circumstances since the Board’s previous grant of permission. In relation to levies, it was stated development contributions applied to telecommunications support structures in 2008 but that the Board neglected to include a development contribution when granting permission under ABP Ref. PL 08.228598. It was submitted that, under the current Kerry County Council Development Contribution Scheme, contributions of €5,000 apply for Roads and Transportation and for Community and Amenity for new telecommunication masts and that the Scheme also requires a payment of contributions at a rate of 150% of the standard rate in the case of retention permissions, requiring contributions of €7,500 to apply for both Roads and Transportation and for Community and Amenity.

3.3. Third Party Observations

An objection was received by the planning authority attached to which there were 39 signatories. The objection raised a number of concerns relating primarily to impact on residential amenity and siting. Further objections were received from Dermot Dineen and Michael Gleeson relating to the proximity of the mast to Dermot Dineen’s house.

4.0 Planning History

ABP Ref. PL 08.228598

Permission was granted by the Board on 24th October, 2008 for the construction of a 25 metre support pole to carry three radio aerials for use by the emergency services together with associated equipment for a new National Digital Radio Service.

Condition no. 1 of that permission limited the permission to ten years from the date of the Order unless, prior to the end of the period, permission had been granted for retention for a further period. There was no condition requiring the making of a development contribution.

5.0 Policy Context

5.1. Kerry County Development Plan 2015-2021

There is a wide range of provisions in the Plan relating to telecommunications. These include Objective ICT-2 which seeks to facilitate the sustainable development of a modern efficient telecommunications network serving the county

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal relate solely to the attachment of Condition no. 3 with the planning authority's decision and may be synthesised as follows:

- The development contribution has been calculated in accordance with the guidance note on page 20 of the Council's Development Contribution Scheme. This is not applicable to the application which is made on foot of the granting of a temporary permission as opposed to unauthorised development.
- The National Broadband Plan and the Report of the Mobile Phone and Broadband Taskforce is the equivalent of the National Broadband Scheme and the exemptions in the development contribution scheme should apply to this infrastructure.

- The *Development Contributions Guidelines for Planning Authorities* require planning authorities to include waivers for broadband infrastructure in their development contribution schemes. The application of the ‘broadband infrastructure’ exemption in this instance is reasonable.
- The appellant is committed to ensuring the installation continues its use as a key element for Tetra Ireland (the National Digital Radio Service). The installation will also be made available to other telecommunications and broadband operators. There is space to accommodate additional mobile broadband licensed operators.
- Reference is made to An Bord Pleanála precedent, namely Appeal Refs. PL 10.248622, PL 19.300904, and PL 92.300853.

6.2. Planning Authority Response

The planning authority’s response to the appeal may be synthesised as follows:

- The application for retention was received by the planning authority on 18/12/2018 at which time the temporary ten year grant of planning permission had expired. Therefore, at the time the application for retention was lodged the monopole was an unauthorised development.
- The Council’s Development Contribution Scheme requires development contributions for telecommunication masts to be charged at a rate of €10,000. While it states that masts for communications purposes which form part of the National Broadband Scheme shall receive a 100% reduction in development contributions, Section 9 of the Scheme states that no reductions/exemptions shall apply in the case of an application for retention permission and that applications for retention shall be charged at a rate of 150% of the standard Roads and Transportation and Community and Amenity contribution. As the monopole was unauthorised on the date of the making of the application, a condition requiring the payment of €15,000 in contributions had to be attached with the decision.
- It is noted that the development description for the retention of the monopole states that it is carrying three radio antennae for use by the emergency

services and that there is no mention of the use of the monopole for communication purposes that form part of the National Broadband Scheme. It is further noted that no development contributions were previously paid in relation to the existing monopole when development contributions were applicable in 2008 at the time of the Board's decision.

6.3. Further Responses

In response to the planning authority's submission, the appellant stated that at the time the application was submitted the parent permission was still valid. It was submitted that a period of 9 days per year is applied to the calculating of statutory timeframes within the planning system and that the permission only expired ten years and 90 days after the grant of permission on the 24th of October, 2008. It was further submitted that the drawings included with the planning application show that there is space to accommodate additional mobile broadband licensed operators who wish to co-locate in order to provide 3G, 4G and broadband coverage to the local community. It was, thus, concluded that the monopole can be considered as a mast for communications purposes which forms part of the National Broadband Scheme. The Board was again referred to Appeal Refs. PL 10.248622, PL 19.300904, and PL 92.300853.

Condition 1 of the Board – 10 years from the date of the order!!! i.e. 24th October 2008

No reference to National Broadband Scheme.

7.0 Assessment

7.1. The appeal relates to the proper application by the planning authority of the terms of its development contribution scheme adopted under section 48 of the Planning and Development Act with regard to Condition 3 of the planning authority's decision. It is considered appropriate that the Board determines the appeal in relation to the disputed condition only. The provisions of section 48(10)(b) and (c) apply in this instance.

7.2. The following is noted from the current Kerry County Council Development Contribution Scheme 2017:

- Page 9 of the Scheme sets out the development contributions required with respect to Roads & Transportation and Community & Amenity. For telecommunication masts, antennae, dishes & other apparatus/equipment for communication the contributions required for Roads & Transportation and Community & Amenity are each €5,000, requiring a total contribution of €10,000 per unit.

- Page 13 of the Scheme states the following:

“Telecommunications

Masts and antennae, dish and other apparatus/equipment for communication purposes shall be charged at a rate of €10,000. This contribution shall be split 50/50 between the Roads & Transport and the Community & Amenity. If Development Contributions have been charged previously on a mast then they shall be exempt under this scheme from additional contributions.

Masts and antennae, dish and other apparatus/equipment for communication purposes which form part of the National Broadband Scheme (NBS) as defined by the Department of Communication, Energy and Natural Resources (DCENR) shall receive a 100% reduction in development contributions. A 100% reduction also applies to infrastructure provided in support of the Community Broadband Scheme.”

- Page 19 of the Scheme states the following:

“8. Temporary Permissions

Reductions in development contributions in relation to development granted temporary planning permission are as follows:

- 33% of normal rate for permissions of up to 3 years*
- 50% of normal rate for permissions of up to 5 years*
- 66% of normal rate for permissions of up to 10 years*

The above reductions apply to first applications for temporary permission only. Any subsequent application for a temporary permission shall be subject to the full rate of contributions.”

- On page 20 the following is provided:

“9. Retention of Development

No reductions/exemptions shall apply in the case of an application for retention permission.

Applications for retention shall be charged a rate of 150% of the standard Roads & Transport Contribution and Community & Amenity Contribution. This follows what is suggested in the Guidelines ...”

7.3. My considerations on this appeal are as follows:

- The Board did not include a development contribution previously. This was not typical of such decisions.

- The temporary permission for the mast and equipment expired before the making of the current application. Therefore, the existing development on this site is unauthorised. To be clear on this issue, I note that Condition 1 of the Board’s decision under Appeal Ref. PL 08.228598 was as follows:

“1. This permission is for a period of ten years from the date of this order. The telecommunications structure and related ancillary structures shall then be removed unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.

Reason: *To enable the impact of the development to be re-assessed, having regard to changes in technology and design during the period of ten years.”*

The date of the Board’s order was 24th October, 2008. It is, therefore, apparent that the temporary permission expired by 24th October, 2018. The application for retention was lodged on 18th December, 2018.

- The application details at no time made reference to the use of the monopole for communication purposes that form part of the National Broadband Scheme. It is disingenuous to now seek an exemption by claiming the structure will at some time in the future be potentially used to form part of this Scheme.
- The Council's Development Contribution Scheme requires development contributions for telecommunication masts to be charged at a rate of €10,000. Section 9 of the Scheme states that no reductions/exemptions shall apply in the case of an application for retention permission and that applications for retention shall be charged at a rate of 150% of the standard contribution, i.e. in this instance €15,000.
- Masts for communications purposes which form part of the National Broadband Scheme receive a 100% reduction in development contributions under the Scheme. However, the development description in this application was very clear that permission was sought for the retention of the monopole that is carrying three radio antennae for use by the emergency services. The development proposal cannot now simply be extended to include for communications purposes forming part of the National Broadband Scheme potentially at some time in the future.
- The appellant has referenced a number of decisions by the Board as precedence. Appeal Ref. PL 10.248622 was for an application for permission for a monopole, not retention. Furthermore, the proposed development constituted equipment for communication purposes that forms part of the *National Broadband Plan* and the *Report of Mobile Phone Taskforce*. Appeal Ref. ABP-300904-18 was an application for permission for a monopole, not retention. Furthermore, that development was to provide accommodation for Meteor for the provision of voice and mobile broadband services in the area. Appeal Ref. ABP-300853-18 was for permission for a lattice support structure, not retention. Furthermore, the proposed development constituted equipment

for communication purposes that formed part of the National Broadband Scheme.

Having regard to the above, it is evident that the planning authority applied the terms of its Development Contribution Scheme correctly. The payment of €15,000 in development contributions is correct in this instance.

8.0 Recommendation

8.1 I recommend as follows:

Having regard to the nature of condition number 3 the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and directs the said Council to:

ATTACH Condition number 3 and the reason therefor.

9.0 Reasons and Considerations

Having regard to the nature of the development, which is a development for retention that is subject to the provisions of Kerry County Council Development Contribution Scheme 2017, it is considered that the terms of the development contribution scheme have been properly applied and that a development contribution condition requiring the payment of €15,000 should be included in this instance.

Kevin Moore
Senior Planning Inspector

23rd May, 2019