



An
Bord
Pleanála

Inspector's Report ABP-304681-19.

Development	Erection of a 33.05m multi-user telecommunications support structure.
Location	Rockcorry GAA Club.
Planning Authority	Monaghan County Council.
Planning Authority Reg. Ref.	19158.
Applicant	Signal Infrastructure Ltd.
Type of Application	Planning Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	First Party – Vs – Condition No. 1.
Appellant	Signal Infrastructure Ltd.
Observer(s)	None.
Date of Site Inspection	23 rd September, 2019.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.01ha, is located in the north easternmost corner of Rockcorry GAA Club grounds, in the Townland of 'Drummulla', in County Monaghan. At its nearest point the site is setback c161m from the club grounds entrance onto the R188 regional road and it is situated c0.33km, as the bird would fly, from where the R188 and Newbliss Road intersect which is on the northern side of Rockcorry village. The site is predominantly surrounded by agricultural land to the north and east. To the south and south west by Rockcorry GAA club grounds. To the east and west along the R188 there is mixture of land uses present.

2.0 Proposed Development

2.1. Planning permission is sought for the erection of a new 33.05m multi-user telecommunications support structure carrying 9 no. antennae and associated remote radio units, 6 no. communication dishes, 3 no. lightning finials and 6 no. outdoor cabinets all enclosed within a security compound by a 2.4m high palisade fence with a 4m access gate, site access and site works. The public notice also indicates the proposed 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 granted permission subject to conditions. Condition No. 1 is relevant to the subject matter of this appeal case. It reads:

“(a) The developer shall pay to Monaghan County Council a sum of €10,480.00 in accordance with the General Development Contribution Scheme 2013-2019 (as amended), 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.”*

The stated reason reads:

“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 in the area.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officers report is the basis of the Planning Authority’s decision.

3.2.2. Other Technical Reports

Roads: No objection.

Environment: No objection.

Municipal District of Ballybay-Clones: No objection.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Site and Setting

4.1.1. None relevant.

5.0 Policy and Context

5.1. National Planning Provisions

- 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. Local Planning Provisions

- 5.2.1. The Monaghan County Development Plan, 2019 to 2025, is the applicable Development Plan for the site and its setting. The site is located on land zoned ‘*Category 2 – Remaining Rural Area*’ within the development limits of the settlement of Rockcorry.
- 5.2.2. Section 7.20 of the said Plan recognises that the existence of high quality and sustainable telecommunications network is vital to the continued growth of the economy and the quality of life in the County.
- 5.2.3. Objective TC01 states that the Planning Authority will seek “*to facilitate the development of a high quality and sustainable telecommunications network for County Monaghan to support economic growth, improve quality of life and enhance social inclusion.*”

5.3. Development Contribution Scheme

- 5.3.1. 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. Current indexed link charges are €10,480 per mast. Of note Section 19(e) of the Contribution Scheme which deals with the matter of 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.

5.4. Chief Executives Order No. P1/19

5.4.1. This order amends the development contributions applicable to the various categories of development provided for under the Monaghan Local Authorities General Development Contribution Scheme, 2013-2019, with the amendments stated to be in line with the Wholesale Price Index for Building and Construction and came into effect on the 1st day of January, 2019.

5.5. Natural Heritage Designations

5.5.1. None relevant

5.6. Environmental Impact Assessment

5.6.1. Having regard to the nature and scale of the development sought under this application, the distance between the site and sensitive receptors and the lack of any direct hydrological connectivity from the site to any nearby sensitive receptors, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. Therefore, the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows:

- This appeal is made under Section 48(10)(b) of the Planning and Development Acts, 2000, as amended, and as such solely relates to the Condition No. 1 of the Planning Authority's notification to grant permission for the development sought under P.A. Reg. Ref. No. 19158.
- The appellant is of the view that the Planning Authority in this case have incorrectly imposed the Development Contribution under Condition No. 1.
- It is noted that under Appendix 3, Category 3(n) of the Development Contribution Scheme that a €10,420 contribution per past is set out. Notwithstanding, under

Section 19(e) it indicates that there is a 100% exemption for the provision of broadband infrastructure in relation to telecommunications development which is solely for the provision of a broadband infrastructure where new development does not place a demand for new, upgraded or additional infrastructure or services.

- The proposed development is a stand-alone unmanned installation which will utilise an existing access and will be visited c2 to 3 times a year for maintenance purposes. As such it will not place any additional demand for new, upgraded or additional services.
- Reference is made to the Development Contribution Guidelines for Planning Authorities, 2013, which seeks the waiver of development contribution for broadband infrastructure (masts and antennae).
- This infrastructure would provide mobile and broadband data services for the Rockcorry area, the townlands of Claraghy, Glencorick, Boyher, Glen, Drumlona, Corragore, Monneill, Maghernaharny and surrounding rural areas. It is further indicated that it will close a coverage gap on the R118 and R193 regional roads as well as the L2600, L26001 and Hilltop local roads.
- Reference is made to Circular PL 03/2018 which also seeks the waiver of development contribution charges for broadband infrastructure (masts and antennae).
- The Council in their preparation of their planning policy documents was to include the provisions of the 2013 Guidelines and this Circular.
- Reference is made to the National Broadband Scheme. In a manner consistent with this scheme the appellant is delivering the required infrastructure to facilitate broadband provision in the form of 3G and 4G connectivity to the widest catchment and provide necessary service to residential, business and transport customers locally thus circumventing State intervention at this locality.
- At present the service achievable in this area is seriously hampered by a lack of a localised base station and for that reason the application was submitted.
- Reference is made to the Boards determination for appeal case ABP-300904-18.
- The Board is requested Condition No. 1 be removed.

6.2. Planning Authority Response

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

- Reference is made to Section 7 of the Development Contribution Scheme which indicates that in general all planning permissions granted permission will be subject to the Development Contribution Scheme.
- The Development Contribution Scheme includes development contribution charges in respect of community, recreation and amenity facilities within a specific category to telecommunications (Category 3(n)).
- In accordance with Section 2 of the Development Contribution Guidelines the Planning Authority have incorporated a waiver in respect of development solely for broadband within Section 18 of its Development Contribution Scheme but charges can still be levied on telecommunication development that is not solely for broadband provision.
- The appellant refers to Circular 03/2018. This circular was issued by the Department in July 2018 subsequent to the most recent revision of the Councils Development Contribution Scheme which came into effect in May, 2018. The new Development Plan became effective on the 1st day of April, 2019, and on foot of this a new Development Contribution Scheme is being drafted to ensure consistency between the two documents. The new scheme will take account of Circular PL03/2018. In the absence of this new scheme the provisions of the current scheme must still be applied.
- Under the current scheme the proposed development falls under Category 3(n) and the rate for 1 new mast is €10,480.00 towards community, recreation and amenity infrastructure. There are no exemptions or reductions applicable to this type of development.
- The National Broadband Plan has yet to be implemented by the Government and it would not be appropriate of the Council to rely on an assumption at this point in time.
- The reference case cited by the appellant is different to this case as the Development Contribution Scheme is tightly defined as "*telecommunications development which is solely for the provision of broadband infrastructure*". The

subject development does not solely relate to broadband infrastructure as such so the exemption cannot be applied.

- Further reference to Circular PL03/2018 is made where it states that “*operators must 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 inadequate mobile or broadband service*” to avail of exemptions from the development contribution.
- Reference is made to the Boards determination of appeal case ABP-303847-19 which they argue is a similar case where the Board considered that the Development Contribution Scheme had been properly applied and that the condition should remain attached.
- The Development Contribution Scheme has been properly applied.

6.3. Further Responses

6.3.1. The appellants further response can be summarised as follows:

- The principal matter that is before the Board is whether the Council has applied the development contribution correctly in accordance with the terms of the Councils
- It is clear from the Planning Authority’s response that they intend to wholly meet the requirements of Circular PL03/2018 in its amended Development Contribution Scheme.
- The Board is requested to suspend making its decision until the new Development Contribution Scheme is adopted by Monaghan County Council.
- The proposed development provides the same infrastructure as that sought under the case dealt with by the Board under ABP-300904-18. It is hoped that the Board will similarly under this case endorse the Governments telecommunications strategy known as the National Broadband Plan.
- The appellants have demonstrated that this infrastructure will provide services to customers who would not otherwise avail of an adequate mobile or broadband service.

- The fact that the regularisation of the new Government policy will be implemented by a Council 'the next time' it implements its new Development Contribution Scheme, as per the requirements of Circular PL03/2018 is merely the procedural process requirement of the policy.
- The Planning Authority is seeking the Board to ignore Circular PL03/2018 until the new Development Contribution Scheme is adopted.

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). An appeal may be brought to the Board under section 34 considers the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the planning authority. 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. Therefore, in this appeal, the issue to be considered is whether the terms of Scheme have been properly applied.

7.2. The current proposal is for:

- The erection of a new 33.05m multi-user telecommunications support structure carrying 9 no. antennae and associated remote radio units;
- 6 no. communication dishes;
- 3 no. lightning finials;
- 6 no. outdoor cabinets;
- All of the above to be enclosed within a security compound by a 2.4m high palisade fence with a 4m access gate;
- All associated site access and site works.

7.3. I also note to the Board that the public notices indicate that the proposed development will provide voice and mobile broadband services in the area. As set out in Section 1 of this report the subject site is located in the north easternmost corner of the Rockcorry GAA Club grounds on the eastern fringes of Rockcorry

village, in County Monaghan. Under Condition No. 1, the subject matter of this appeal, a development contribution of €10,480.00 has been applied under Category 3(n) of the Monaghan County Council Development Contribution Scheme, 2013-2019, as revised in 2019, which allows for index linked increases in charges.

- 7.4. I note that Section 19 of the scheme sets out certain Exemptions/Reductions and it 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”*. Listed under subsection (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.
- 7.5. As set out the proposed development is a single multi-user telecommunications support structure which would be accessed through the existing grounds of Rockcorry GAA club grounds which is served by an entrance onto the R188 to the south of the site. According to the documentation once operational it would be accessed 2 to 3 times per year for maintenance purposes and as such I agree with the appellant that it would place a negligible demand for new, upgraded or additional infrastructure or services either at the site or within its immediate vicinity. Notwithstanding, the public notices and the documentation submitted indicate that it is proposed to provide both broadband and mobile infrastructure which is not strictly consistent with the requirements of the current Development Contribution Scheme. This is acknowledged by both the appellant and the Planning Authority.
- 7.6. The Planning Authority indicate in their response to the appellants grounds of appeal that they are currently in the process of amending their Development Contribution Scheme to take account of government direction on development contributions relating to the provision of such infrastructure in that waivers should apply to both broadband and mobile infrastructure.
- 7.7. The appellant in their response to the Board consider that having regard to the Planning Authority’s submission seek that the Board defer its decision until the new Development Contribution Scheme is adopted. I consider that this request is reasonable; however, should the Board decide to determine the appeal prior to this

scheme being formally adopted I concur with the comments made by the Boards Inspector in their assessment of case ABP-303847-19 where they state the following:

“In 2013, the Governments 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.

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’.

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.

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. The proposed development at the subject site at Rockcorry GAA Club grounds like the proposed development permitted at Coillte Forest, Castleshane Demesne, County Monaghan, under P.A. Reg. Ref. No. 18558 (ABP-303847-19) provides for both broadband and mobile infrastructure in an area where there is poor and absent coverage. The appellants indicate that the provision of such infrastructure is being deployed by them at this location in a consistent manner with national planning policy provisions including Section 2.2 National Planning Framework and also the National Broadband Plan which seek its delivery through the combination of commercial and state led investment and is further consistent with Irelands obligation under the EU Digital Agenda for Europe.
- 7.9. In relation to Board case ABP-300904-18, this was also an appeal made in respect of a development contribution that was levied in respect of a telecommunications mast that provided both mobile and broadband infrastructure, in County Offaly, the Board decided that the development contribution levied was not warranted as the Offaly’s Development Contribution Scheme that was in place at the time the Board made its determination included an 100% exemption for broadband Infrastructure. In this case the Board concluded that the Development Contribution Scheme had not been properly applied. This decision predated Circular PL03/2018 whereas the Boards decision in appeal case ABP-303847-19 came after.
- 7.10. Having regard to the submissions on file I consider that both the appellant and the Planning Authority are cognisant of the aims of the National Broadband Plan (formerly the National Broadband Scheme) which aims to improve broadband availability nationwide through a combination of commercial and state led investment. They are also cognisant that Circular PL03/2018 that it states to ensure that a consistent approach is applied by all local authorities in regards to the scope

of the waiver to include mobile phone infrastructure for the purposes of assisting in improving phone coverage in areas under local authorities Development Contribution Scheme, that *“such waivers are applied in Development Contribution Schemes in respect of both mobile phone and broadband infrastructure. In light of this, those local authorities who have not yet done so should now ensure that their Development Contribution Schemes are updated accordingly as soon as possible”*. It goes on to state that *“this waiver shall apply to any telecommunications infrastructure, both mobile and broadband, being deployed as part of a Government endorsed strategy, plan or initiative”*. The 2013 Development Contribution Guidelines for Planning Authorities, 2013, was revised on foot of this circular.

- 7.11. The Board in appeal case ABP-303847-19 *“having regard to government policy in respect of Development Contributions, as expressed in Circular PL03/2018, and the exemptions provided for in section 19 and 19(e) of the Monaghan Local Authorities General Development Contribution Scheme 2013-2019 it considered that the terms of the Development Contribution Scheme had been properly applied.”*
- 7.12. In the absence of the amendment to provide for mobile telephony alongside broadband which according to the Planning Authority is to be provided within weeks I consider that any decision to omit Condition No. 1 would be inconsistent with the Monaghan Local Authorities General Development Contribution Scheme, 2013-2019, as revised, as Section 19 clearly indicates that *“the Planning Authority may allow for full or partial exemptions from payment at its discretion”*. However, it also indicates that 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 in its subsections. Of relevance to the matter of this appeal is Section 19(e). It provides for a 100% exemption from all development charges in relation to telecommunications 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 infrastructure under this application is both mobile and broadband. As such the proposed development falls under Category 3(n) under Appendix 3 of the Development Contribution Scheme, as revised (Chief Executives Order No. 1 P1/19), which sets out the levels of general contribution applicable to telecommunication infrastructure as €10,480 per mast/installation and

that this contribution is for the provision of community, recreation and amenity infrastructure.

- 7.13. Should the Board seek to omit Condition No. 1 it would require in this case that the relevant amendment to be made to the Monaghan Local Authorities General Development Contribution Scheme. I therefore advise the Board at its discretion to defer its decision until such time. I do not consider this request by the appellant unreasonable.

8.0 Recommendation

- 8.1. Having regard to the foregoing, at the time this report was prepared, I am of the view that the Planning Authority have properly applied the terms of the current Development Contribution Scheme, i.e. Monaghan County Council General Development Contribution Scheme, 2013-2019, as this proposed development does not solely provide for broadband.
- 8.2. Notwithstanding, of concern this scheme is inconsistent with the government's policy in respect of Development Contributions as expressed in Circular PL03/2018.
- 8.3. I therefore recommend that the Board defer its decision until the soon to be updated applicable Development Contribution Scheme becomes effective as is requested by the appellant in this appeal case. This request is reasonable based on the Planning Authority's response who will be reconciling their contribution scheme in a manner that is consistent with Circular letter PL03/2018. Only at this stage will their Development Contribution Scheme be consistent with national policy guidance by way of including a waiver for mobile and broadband infrastructure from the payment of financial contribution.
- 8.4. In the absence of this deferral I consider that to maintain Condition No. 1 would be consistent with the Boards decision in appeal case ABP-303847-19.

Patricia-Marie Young
Planning Inspector

25th day of September 2019.