



An
Bord
Pleanála

Inspector's Report ABP – 308443 – 20

Development	Replacement of telecommunications structure with a height of 17m and ground level equipment cabinets,
Location	Eir Exchange, Largy, Clones, Co. Monaghan.
Planning Authority	Monaghan County Council.
Planning Authority Reg. Ref.	20305.
Applicant	Vodafone Ireland Limited.
Type of Application	Planning Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	First Party – V – Condition No. 1.
Appellant	Vodafone Ireland Limited.
Observer(s)	None.
Date of Site Inspection	10 th day of December, 2020.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. The irregular shaped appeal site which has a stated 0.015ha area is situated in the north eastern fringes of Clones town, in the Townland of 'Largy', County Monaghan, c0.1km to the east of the Sacred Heart Cemetery and c0.5km to the east of Church Hill. It occupies an elevated position within its landscape setting but its main boundaries contain mature evergreen trees and there is a substantial retaining wall along the main northern portion of the site with higher ground levels on the adjoining side. These factors together with the backland location of the main site area results in the buildings on site being largely unobservable from the surrounding public domain.
- 1.2. Access to the site is via an opening onto Roslea Road in close proximity to its southern most spur which terminates in a cul-de-sac in close proximity to the east of the site. From this access there is a curving restricted in width access road that runs along the southernmost boundary of a two-storey detached period property. The ground levels fall in a southerly direction away from this access road and the southern boundary of the site towards the N54.
- 1.3. The aforementioned property is not afforded any specific protection nor are the period properties that are located between the site and the Sacred Heart Cemetery.
- 1.4. The main site area contains a single storey dilapidated red brick structure with a mast and equipment cabinet located to the east of it. The ground around these structures is predominantly hard surfaced but in a poor state of repair. The main area of the site is unkempt with dumping evident.
- 1.5. The site occupies an edge of settlement location with a mixture of residential, institutional, industrial through to the commercial type of land uses to the north, west and south whereas the neighbouring land to the north east merges into open countryside. The topography is characterised by its steep rolling drumlin landscape.

2.0 Proposed Development

- 2.1. Planning permission is sought for the replacement of an existing telecommunications support structure (overall height of 17 metres) with a new lattice tower (overall height of 25.5 metres) carrying the telecommunications equipment transferred from the

existing structure and the addition of new telecommunications antennas, dishes, and associated equipment together with new ground level equipment cabinets and fencing.

3.0 Planning Authority Decision

3.1. Decision

3.2. On the 21st day of September, 2020, the Planning Authority decided to grant planning permission for the proposed development subject to 6 no. conditions. Of relevance to this appeal is Condition No. 1. It reads as follows:

- “a. The developer shall pay to Monaghan County Council a sum of €10,660.00 in accordance with the General Development Contribution Scheme 2013-2019 (as revised), 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 for the above stated condition is given as follows: *“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.”*

3.3. Planning Authority Reports

3.3.1. Planning Reports

The **Planning Officers report** considered that the provision of telecommunications services is essential to promoting commercial and industrial development as well as

enhancing social inclusion and improving personal through to household security. It further considered that it is a policy of the Council to facilitate development involving telecommunications that do not detrimentally impact upon the character of their setting. It concludes that the site being located in a drumlin landscape that is not subject to any specific designations for protection would be acceptable for the proposed development and the proposed development would afford improved telecommunications and broadband coverage in the area.

3.3.2. **Other Technical Reports**

- **Environment:** No objection subject to safeguards.

3.4. **Prescribed Bodies**

3.4.1. **IAA:** No observations to make.

3.5. **Third Party Observations**

3.5.1. The Planning Authority received two 3rd party submissions objecting to the proposed development during the course of their determination of this application. The substantive concerns related to adverse visual and residential impact on its setting.

4.0 **Planning History**

4.1. No recent and/or relevant planning history relating to the site and its setting.

5.0 **Policy & Context**

5.1. **National Policy**

- **Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, DoECLG, 1996.**

These Guidelines set out the criteria for the assessment of telecommunications structures. They aim to provide general guidance on planning issues so that the environmental impact is minimised, and a consistent approach is adopted by the various planning authorities. The relevant points to this case are summarised below.

- Section 4.3 in relation to visual impacts sets out along major roads or tourist routes, or viewed from traditional walking routes, masts may be visible but yet are not terminating views. In such cases it might be decided that the impact is not seriously detrimental. It also indicates along such routes, views of the mast may be intermittent and incidental, in that for most of the time viewers may not be facing the mast. In these circumstances, while the mast may be visible or noticeable, it may not intrude overly on the general view or prospect.
- Section 4.5 the sharing of installations and clustering of antennae is encouraged as co-location will reduce the visual impact on the landscape.

- **Circular PL07/12.**

This Circular Letter revises elements of the 1996 Guidelines. It notes that the Guidelines pre-dated the introduction of development contribution schemes and states that the then draft Development Contributions Guidelines require 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.**

Section 2 of the Guidelines which deals with the matter of 'Supporting Economic Development', states that planning authorities are required to include a series of waivers and reductions in their development contribution schemes. The list includes "*waivers for broadband infrastructure (masts and antennae)*".

- **Revision of Development Contribution Guidelines in respect of Telecommunications and Infrastructure, Circular Letter PL 03/2018.**

This circular relates to a revision of the 2013 Development Contribution Guidelines for Planning Authorities and contains a 'specific planning policy requirement' which pursuant to Section 28(1C) of the Planning & Development Act, as revised, is mandatorily required to be applied by planning authorities. It sets out a waiver to apply to any telecommunications infrastructure, both mobile and broadband, being deployed as part of a Government endorsed telecommunications strategy, plan, or initiative. It requires that 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. It indicates that such infrastructure shall not attract development contributions and that this waiver applies to masts, antennae, dishes and other apparatus or equipment being installed for such communication purposes.

5.2. Development Plan

- 5.2.1. **Monaghan County Development Plan, 2019 to 2025**, is the applicable Development Plan.
- 5.2.2. Section 7.2 of the Development Plan indicates 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. It also recognises that there have been considerable advances in broadband over the last two decades and that this infrastructure can help to combat social exclusion by providing access to information and services in a wide variety of area.
- 5.2.3. Objective TCO 1 of the Development Plan states: *“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”*.
- 5.2.4. Policy TCP 1 of the Development Plan states: *“to support the delivery of high capacity information Communications Technology Infrastructure and broadband connectivity throughout the county”*.
- 5.2.5. Policy TCP 3 of the Development Plan states: *“to achieve a balance between facilitating the provision of telecommunications infrastructure in the interests of economic and social progress and maintaining residential amenity and environmental quality”*.
- 5.2.6. Section 15.21 of the Development Plan indicates that the provision of telecommunications services is essential to promoting commercial and industrial development alongside enhancing social inclusion, improving personal and household security.
- 5.2.7. To this end policy TCOP 1 seeks: *“to facilitate the orderly development of telecommunications in accordance with the requirements of the ‘Telecommunications Antennae and Support Structures Guidelines for Planning Authorities’ (1996) and*

Circular PL 07/12 or any subsequent national guidelines in this regard". This section of the Development Plan also sets out the following policies which are relevant to the development sought.

5.2.8. Policy TCOP 2 of the Development Plan states: *"to promote best practice in siting and design for all telecommunications structures to ensure the visual amenity and the landscape character of the area is protected as far as is possible. Where possible they should be located so as to benefit from screening afforded by existing tree belts, topography, or buildings"*.

5.2.9. Policy TCOP 4 of the Development: *"to require co-location of antennae support structures and sites where feasible unless it demonstrated to the satisfaction of the Planning Authority that the co-location is not feasible"*.

5.3. Monaghan County Council General Development Contribution Scheme, 2013 to 2019.

5.3.1. Section 18 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."*

5.3.2. Subsection (e) states that there will be a: *"100% exemption from all development 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"*.

5.3.3. Appendix 3 sets out the levels of general development contribution payable. Development category 3(n) relates to telecommunications and states that the amount of contribution is €10,000 per mast and €5,000 per antenna installed on existing mast.

5.3.4. Section 20 makes provision for these rates of contribution to be indexed in accordance with changes to the Whole Price Index for Building and Construction published by the Central Statistics Office. The current rate of contribution is €10,480 per mast/installation and €5,260 per antenna/dish installed on existing mast/installation.

5.4. Natural Heritage Designations

5.4.1. The nearest European site is located c0.6km to the north of the site. This site is Kilroosky Lough Cluster SAC (Site Code: 001786). There are no other European sites within the wider vicinity of the site.

5.5. EIA Screening

5.5.1. The proposed development comprises minor construction works, is not located in an environmentally sensitive site, is significantly removed from the nearest European site, the site and the urbanscape it forms part of are serviced lands. I therefore consider that the proposed development is not likely to give rise to significant environmental effects or to warrant environmental impact assessment.

6.0 The Appeal

6.1. Grounds of Appeal

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

- The Planning Authority in this case have incorrectly applied the terms of their development contribution scheme and it is therefore requested that the Board remove Condition No. 1 from the grant of permission.
- The proposed development is for the replacement of an existing telecommunications site. As the existing structure is not capable of supporting the full configuration of equipment from new operators.
- The proposed development has the potential of co-location.
- The rationale for the proposed development is to improve coverage and capacity of mobile telecommunications and broadband services in this area.
- The current contribution scheme requires the payment of a financial contribution under Section 3(n); and in the case, it is contended that it has been erroneously applied as this infrastructure would include the provision of both mobile phone services and wireless broadband services.
- The development contribution scheme should apply waivers in respect to both broadband and mobile phone infrastructure.

- The new contribution scheme is yet to be adopted but is indicated that it would be consistent with Circular PL03/2018.
- Circular PL03/2018 advises that Planning Authorities provide waivers for broadband infrastructure and for this to be extended to include mobile phone infrastructure.
- The applicant provides infrastructure for multiple clients at local through to national level and seek to reduce the proliferation of such infrastructures through colocation.

6.2. Planning Authority Response

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

- The Board is restricted in this case to the matter of whether or not the Planning Authority has applied development contributions in accordance with the terms of their development contribution scheme.
- The merits of the scheme are not for consideration as these are matters for consideration during the formulation of the scheme.
- Reference is made to Section 7 of the scheme. This sets out that all planning permissions are subject to the specified development contribution charges within the scheme where appropriate.
- The scheme includes development contribution charges in respect of Community, Recreation and Amenity facilities with a category included therein specifically relating to telecommunications i.e., Category 3n.
- The Planning Authority in accordance with Section 2 of the Development Contribution Guidelines for Planning Authorities, 2013, has included a waiver in respect of development solely for 'broadband' under Section 18 of the scheme. This is in keeping with the Implementation Programme on Mobile Phone and Broadband Access.
- Charges can still be levied on telecommunication development that is not solely for broadband provision.
- Circular PL03/2018 was issued subsequent to the most recent revision of the scheme.

- A new development contribution scheme is currently being drafted and will be placed on public consultation in the coming weeks. It is hoped that this new scheme will be in place next year and this new scheme will take account the requirements of Circular PL03/2018.
- In the meantime, the provisions of the current scheme must be applied. The method of calculation is given as follows:

Category	Dev Type	Rate	Floor Area/ Number / Units	Calculation	Contribution Due (€)
3(n) Community, Recreation & Amenity Infrastructure	Telecommunications Infrastructure	€10,660 per Mast/ Installation	1 new mast	€10,660	€10,660
Contributions Due (€)					€10,660.00
Exemptions / Reductions under Part 18 of Development Contribution Scheme (if applicable)					
Category (a) – (m)	Dev Type	% Reduction	Calculations		Exemption / Reduction (€)
					N/A
Total Amount Due					
Contributions Due – Discount					Total Due(€)
					€10,660.00

- The exemption in the scheme is tightly defined and the proposed development sought under this application will facilitate both broadband provision as well as voice connectivity. It is therefore considered that the proposed development does not solely relate to broadband infrastructure and the exemption cannot be applied.
- It is noted that Circular PL03/2018 requires 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 adequate mobile or broadband service to avail of exemptions from development contributions. This has not been satisfactorily demonstrated in this case.
- Reference is made to similar appeal case ABP-303847-19 and ABP-304681-19 determined by the Board.
- The appellant states that the proposed development will facilitate co-location of telecommunications apparatus and will reduce the proliferation of the same. This

is not disagreed with and colocation of telecommunications apparatus are encouraged by them.

- The scheme has been properly applied and the Board is requested to uphold their decision.

6.3. Appellants Response

6.3.1. The First Party's response to the Planning Authority's response can be summarised as follows:

- The rationale for the proposed development is to improve the coverage and capacity of the mobile telecommunications and broadband services in this area.
- Assessment of this appeal must have regard to national policy guidance such as Circular PL03/2018.
- Reference is made to the appeal made to appeal case ABP Ref. No. 304681-19, concerning a financial contribution similarly attached to a telecommunications development and that the Council indicated in their response to this appeal that a new development contribution scheme was being drafted to ensure consistency between it and the Development Plan adopted in 2019. Yet a year has now passed from the Boards decision in this case and the Council still have not had regard to the waivers required under Circular PL03/2018. This is at the expense of infrastructure providers like Signal and Vodafone Ireland Ltd, the appellant, in this case.
- It is unreasonable that infrastructure providers such as the appellant are required to pay financial contributions when a waiver is required to be in place.
- The proposed development is a stand-alone unmanned telecommunications installation which will utilise an existing access and will be visited approximately 2 to 3 times a year by the operators for maintenance purposes. It will therefore not demand for new, upgraded, or additional infrastructure or services either at the site or within its immediate vicinity.
- The Council indicate that they will adopt a new development contribution scheme in 2021 and this is considered to be pertinent given that the replacement is considered for construction in 2021 outstanding any delays arising from Covid-19.

- It is requested that the Board remove Condition No. 1 from the grant of permission.

7.0 Assessment

- 7.1.1. The applicant has lodged a separate appeal to the Board which relates to Condition No.1 only. They essentially seek that this condition be omitted from any grant of planning permission.
- 7.1.2. I note that Condition No. 1 requires the developer to pay the sum of €10,660.00 to Monaghan County Council as a development contribution in accordance with their General Development Contribution Scheme, 2013 to 2019, as amended. With this condition indicating that this goes towards expenditure incurred or proposed to be incurred by them in the provision of community, recreation, and amenity public infrastructure as well as facilities in the area.
- 7.1.3. The said condition further indicates under subsection: (b) that the sum to be attached 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); and, under subsection (c) that no works shall commence until payment of the development contribution.
- 7.1.4. At the time, this report has been prepared I note to the Board that the said general development contribution scheme that was in place at the time this application was submitted to and determined by the Planning Authority is still in place. Its terms are therefore still applicable.
- 7.1.5. I note also to the Board that Section 18(e) of the said scheme states that there will be a: *“100% exemption from all development 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”*.
- 7.1.6. The applicant claims that the development is designed to deliver on the Government’s National Broadband Plan and the development contribution should be waived under the exemption set out above and as a development that seeks the replacement of an existing telecommunications support structure it does not generate any additional or new demand for upgraded or additional infrastructure through to services.

- 7.1.7. They also contend that the Board have removed development contributions from previous similar applications. Notwithstanding, an examination of Board precedent for similar appeals I found that this has not been the case in relation to recently considered appeals by the Board within the context of Monaghan County Councils administrative area and within the context of the said general development contribution scheme.
- 7.1.8. The planning authority in their response to the applicant's grounds of appeal consider that the terms of their general development contribution Scheme have been correctly applied though they indicate that they are in the process of drafting a new development contribution scheme. As said, there is no new scheme adopted nor can I find any clarity on when it is realistically envisaged by them for any timescale in the preparation as well as adoption of the same.
- 7.1.9. It is further contended by the Planning Authority that the appellant has failed to demonstrate that that the infrastructure provided by them provides services to customers that would not otherwise be able to avail of an adequate mobile or broadband service. They contend that this is also a requirement of Circular PL03/2018.
- 7.1.10. The documentation submitted by the applicant indicates that the proposed development is required to allow all operators to deploy 3G and high speed 4G broadband services including future technology rollout. They indicate that it is for mobile and broadband service operators and providers, but it is not satisfactorily clear that in the absence of the telecommunications structure at Largy provided by the appellant and the replacement telecommunications structure that customers in this area would not otherwise be able to avail of an adequate mobile or broadband service from other service operators and their telecommunications infrastructure.
- 7.1.11. On the basis of the information provided with the initial application and on appeal I therefore concur that this requirement of Circular PL03/2018 has not been demonstrated.
- 7.1.12. I am cognisant that Circular PL03/2018 indicate that those local authorities who have not yet done so should now ensure that their Development Contribution Schemes are updated and revised to ensure that the waivers in respect of both mobile phone and broadband infrastructure be provided for. There is also a considerable time that has been passed since this National Policy Guidance was issued as well as that there is a

clear inconsistency between the general development contribution scheme for the administrative area of Monaghan County Council that is currently applicable and this national policy guidance.

- 7.1.13. The Board in similar cases have concluded that as the exemption provided for under Section 18(e) of the Development Contribution Scheme relates solely to broadband infrastructure it concluded that the scheme had been correctly applied by the Planning Authority based on the terms of the applicable scheme that was in place.
- 7.1.14. As this mast does not solely relate to broadband infrastructure the exemption is also not applicable in this case and there are Board precedent in place which as said reach this conclusion in similar appeal cases. While I agree with the appellant that the proposed development would not result in any demand for upgraded or additional infrastructure through to services, the applicable development scheme includes no exemption for such replacement infrastructure like that proposed under this application.
- 7.1.15. Further, it would be unrealistic in my view to consider that the replacement structure is a like for like or a similar in nature replacement when compared to the existing structure *in situ* given that the replacement mast is a significantly larger in scale and built form structure, particularly in terms of its overall height.
- 7.1.16. It also includes a larger array of associated equipment and attachments alongside has potential for additional structures to be attached to it in time as part of facilitating any additional future colocation opportunity.
- 7.1.17. I am therefore of the view that the Planning Authority has correctly applied its contribution scheme in this case and should the Board be minded to grant planning permission a Section 48 contribution condition similar to Condition No. 1 of the Planning Authority's grant of planning permission should be imposed.
- 7.1.18. I also note that I have had regard to the precedent cases referred to by the applicant in making my consideration above, including but not limited to ABP-304681-19; ABP-303847-19 and ABP-306279-19. I also note that the appellant referred to ABP-308368-20. This appeal case was withdrawn prior to the Board determining it. Moreover, it is appropriate that all appeal cases be considered on their individual merits.

7.2. Appropriate Assessment

- 7.2.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and the distance to the nearest European sites, I am satisfied that no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Conclusion and Recommendation

- 8.1. In accordance with Section 48 of the Planning and Development Act, 2000, as amended, and based on the reasons and considerations set out below, I consider that the terms of the Monaghan County Council General Development Contribution Scheme, 2013 to 2019, for the area had been properly applied in respect of condition number 1 for the reasons and considerations set out below.

9.0 Direction

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had been properly applied in respect of condition number 1 and directs the said Council to ATTACH condition number 1.

10.0 Reasons and Considerations

- 10.1. It is considered that the planning authority had properly applied the terms of the Monaghan County Council General Development Contribution Scheme, 2013-2019, as this proposed development does not solely provide for broadband.

Patricia-Marie Young
Inspectorate

19th day of January, 2021