



An
Bord
Pleanála

Inspector's Report

ABP.308859-20.

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| Development | Erect 21m high monopole telecommunications support structure with antennae, link dishes and associated equipment and fencing at the Eir Exchange, Scrahannagaur, Sneem, Co. Kerry |
| Planning Authority | Kerry County Council |
| Planning Authority Reg. Ref. | 20/860 |
| Applicant(s) | Eircom Ltd. |
| Type of Application | Permission. |
| Planning Authority Decision | Grant s.t. conditions |
| Appellant(s) | Eircom Ltd. |
| Observer(s) | None. |
| Date of Site Inspection | 7 th June 2021 |
| Inspector | Mary Kennelly |

1.0 Site Location and Description

- 1.1 The appeal site with a stated area of 0.007 ha is located at Scrahannagaur, Sneem, Co Kerry. It is situated just outside the development boundary of the village on the R568. The site consists of an existing Eir exchange which accommodates a 10m high timber monopole with attached equipment and an exchange building. The site is quite narrow (just under 10m) and is well screened by mature vegetation. There is an existing house located to the north of the site and an electricity overhead line passes through the front section of the site.
- 1.2 The existing monopole and exchange building are set back into the site by approx. 20 metres, but are not fenced in. There is a stone plinth entrance wall and gate which is recessed behind the road edge. The remainder of the site is bounded by a low (c.1m high) metal railing behind which lies the mature hedging.

2.0 Proposed Development

- 2.1. This is an application for the erection of a 21-metre-high monopole telecommunications support structure carrying antennas and link dishes together with associated equipment units and security fencing. The proposed monopole and compound would be located in front of the existing monopole and building. The proposed compound measures 12m x 6m and the new pole would be set back approx. 14m from the roadside boundary. The palisade fencing is 2.4m in height.
- 2.2. The application was accompanied by a cover letter and a letter from Towercom setting out the background to the case and justification for the need for the development. It is stated that Eir does not currently transmit from its exchange at Sneem and needs to significantly improve its service provision at this location. The existing timber pole is only 10m high and is too low to effectively propagate signal

across Sneem and is too light to facilitate site sharing. Furthermore, it is located adjacent to trees which effectively block the signal.

- 2.3. The existing Eir infrastructure at Sneem is described as being strategically important for its telecommunications services. It is stated that the proposed development will facilitate the improvement of its next generation services for the benefit of Sneem residents and businesses from within its own telecommunications exchange compound. Centralising Eir's infrastructure within a single site compound, it is stated, greatly simplifies operations and deepens efficiencies and will facilitate site sharing.

3.0 **Planning Authority Decision**

- 3.1. Kerry County Council granted planning permission subject to 5 conditions. Condition No 2, the subject of this appeal states as follows:

Prior to commencement of development, the developer shall pay a contribution of EUR 10,000 to Kerry County Council (Planning Authority) in respect of Roads and Transport and Community and Amenity infrastructure benefitting the development.

The contribution is broken down as follows:

Roads & Transport: €5,000.00

Community & Amenity: €5,000.00

The amount of this contribution is calculated in accordance with the Council's prevailing Development Contribution Scheme and may be increased from January 1st, 2021, and annually thereafter (unless previously discharged) in line with the Wholesale Price Indices -, Buildings 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 Council's 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**

The Local Authority Planner recommended that planning permission be granted subject to 5 conditions, including Condition 2 requiring the payment of a Development Contribution in accordance with the GDSCS.

3.3. **Other Technical Reports**

None recorded on the file.

3.4. **Third Party Observations**

None recorded on the file.

4.0 **Planning History**

No planning history.

Reference is made in the appeal to the following decisions by the Board in respect of financial contribution conditions for telecommunications structures:

PL10.248622 (Reg Ref 17/161) – This was an appeal by Signal Infrastructure against the decision by Kilkenny County Council in respect of telecommunications infrastructure at Barrowmount Td, Goresbridge, Co. Kilkenny. In its decision to grant permission the Board did not attach a Section 48 condition.

ABP.300904 (Reg. Ref. 17/474) - This was an appeal by Signal Infrastructure against the decision by Offaly County Council in respect of a telecommunications

structure at Gracefield GAA, Tullamore Road, Co. Offaly. In its decision to grant permission the Board did not attach a Section 48 condition.

ABP.306965 (Reg. Ref. 201) - This was an appeal by Shared Access Ltd. against the decision by Louth County Council in respect of a telecommunications structure at Dundalk Young Ireland GFC, Rockfield Court, Marshes Upper, Dundalk. In its decision to grant permission the Board did not attach a Section 48 condition.

ABP.300853 (Reg. Ref. 17/601242) – This was an appeal by Three Ireland (Hutchinson) against the decision by Tipperary County Council in respect of a telecommunications support structure at Springfort Retail Park, Stereame, Limerick Road, Nenagh. In its decision to grant permission the Board did not attach a Section 48 condition.

5.0 Policy Context

5.1. Development Plan

The operative plan for the area is the **Kerry County Development Plan 2015 – 2021**. The site is zoned Rural General. Policies and objectives relating to Information and Communication Technology, including telecommunications and broadband are set out in Chapter 7 (Section 7.5). Further guidance is set out in Section 13.14. Policy Objectives ICT-1, ICT-2, ICT-3, ICT-4 and ICT-5 are relevant. In general, these objectives support the sustainable delivery of ICT infrastructure, broadband networks and digital broadcasting as well as a modern efficient telecommunications network in the County.

Kerry County Council **Development Contributions Scheme 2017** was adopted on the 25th of July 2017. There is a requirement to pay €10,000 in respect of telecommunications infrastructure, which is to be split 50/50 between Roads & Transport and Community and Amenity. There is provision for 100% reduction for such development in accordance with the National Broadband Scheme.

5.2. **Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996) –**

These guidelines generally advocate improvements in the country's telecommunications infrastructure, subject to a range of considerations and limitations

5.3. **Development Contributions Guidelines for Planning Authorities (2013) -**

These guidelines require planning authorities in reviewing their development contributions schemes to include waivers for broadband infrastructure (masts and antennae). The Guidelines further state 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.

5.4. **Circulars amending Development Contribution Guidelines 2013**

Prior to the publication of the Development Contribution Guidelines, **Circular PL07/12** was issued by the Minister for the Environment, Community and Local Government to update certain sections of the Telecommunications Antennae and Support Structures Guidelines (1996). It states inter alia 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. Subsequent to the publication of the Development Contribution Guidelines (2013), a further series of Planning Circular Letters were issued under Section 28 of the Planning and Development Act 2000 (as amended) as follows -

Circular PL.3/2013 – Addendum to Development Contribution Guidelines for Local Authorities (26th March 2013). This related to enforcement action in respect of multi-unit developments.

Circular PL18/2013 – Further Addendum to Development Contribution

Guidelines for Local Authorities (12th November 2013). This addendum clarified the options for reduced development contributions available in order to promote the development of renewable energy development for commercial energy supply purposes for either the domestic or export market. Essentially it encouraged the reduction or waiver of charges in respect of renewable energy development which is not supplying energy to the national grid.

Circular PL03/2018 – Revision of Development Contribution Guidelines in respect of Telecommunications Infrastructure (3rd July 2018).

This circular was mandatorily required to be applied by planning authorities. Reference was made to the previous Circulars (as outlined above) and specifically to the requirement for L.A.s to include waivers and reductions in their Development Contribution Schemes, including the application of a specific waiver for broadband infrastructure (masts and antennae). It was noted that whilst this waiver was primarily aimed at facilitating the roll-out of broadband infrastructure, most local authorities had extended it to include mobile phone infrastructure for the purpose of improving mobile phone coverage in their areas. The Circular requires those local authorities who have not yet done so, to ensure that their Development Contribution Schemes are updated to include such waivers in respect of both mobile phone and broadband infrastructure. Specifically, it is stated –

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.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal against Condition No 2 only (development contribution of €10,000) has been prepared and submitted by the applicant Towercom Limited on behalf of Eircom limited (t/a Eir) who request that it be removed. The grounds of appeal may be summarised as follows:

1. Kerry County Development Contribution Scheme 2017

The current Scheme requires payment of a development contribution in respect of telecommunications masts, antennae, dishes and other apparatus/equipment for communication of €10,000. The contribution is broken down into €5,000 for Roads and Transport and €5,000 for Community and Amenity. It is further stated that if a development contribution has previously been charged for a mast, then it shall be exempt from additional contributions. It is further stated -

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

It is clear therefore that the development contribution has been erroneously applied as the proposed telecommunications infrastructure includes the provision of both mobile phone and wireless broadband services and potentially the services of smaller broadband operators. This is in accordance with the waivers provided for in the current GDCS for Kerry.

2. Circular PL03/2018 – Revision of Development Contribution Guidelines in respect of Telecommunications Infrastructure

This Circular which advised a revision to the Development Contribution Guidelines 2013, requires that waivers for broadband infrastructure (masts and antenna) be extended to include mobile phone infrastructure. Local authorities were required to amend their Development Contribution Schemes accordingly. As such, the waiver should be applied to the proposed development.

3. Use as a multi-operator support structure

The 21m monopole would make the site available to other telecommunications and broadband operators in line with local and national policy. Towercom manages an existing mast network in Ireland and facilitates the co-location of multi-operator infrastructure to a wide range of clients including national mobile operators, national and local broadband providers, national broadcasters and national and local emergency services for both the public and private sector. The proposed development will enhance and improve telecommunications and broadband services in the area in accordance with national and local policy.

4. Planning precedent

There should be a consistent approach in the attachment of financial contribution conditions for telecommunications developments. The Board has not included such conditions in recent years in respect of a number of decisions relating to telecommunications infrastructure. Examples include –

PL10.248622 – Barrowmount, Goresbridge, Co. Kilkenny

ABP.300904 – Gracefield GAA, Tullamore Road, Co. Offaly

ABP.306965 – Dundalk Young Irelands GFC, Marshes Upper, Dundalk

ABP.300853 – Springfort Retail Park, Limerick Road, Nenagh

In conclusion, the imposition of the charge is not in accordance with the terms of the current Development Contribution Scheme for County Kerry and is also against the advice outlined within the Department of Environment “Development Contribution Guidelines for Planning Authorities” as amended by Circular PL07/12 and circular PL03/2018 regarding the inclusion of waivers for the provision of broadband and mobile phone infrastructure.

6.2. Planning Authority Response

The Planning Authority responded to the grounds of appeal on 11th January 2021. The main points of the response may be summarised as follows –

- Condition No. 2 complies with the terms of the County GDCS 2017. Although there is provision for 100% reduction in respect of contributions for masts which form part of the National Broadband Scheme (NBS), no information was submitted by the developer to indicate that the telecommunications support structure is being provided in connection with the NBS.
- The grounds of appeal refer to waivers of development contributions in respect of broadband infrastructure included in Circular PL03/2018 – Revision to the Development Contribution Guidelines. However, this Circular post-dates the adoption of the KCC Development Contribution Scheme 2017.
- In conclusion, the KCC Development Contribution Scheme 2017 was correctly implemented when attaching Condition No. 2 to the decision to grant permission for the proposed development.

6.3. Further response from First Party appellant 4th March 2021

A further response to the P.A.’s submission was submitted which mainly re-iterates the grounds of appeal. However, some additional points were made as follows:

- It is requested that the Board does not “disregard Circular PL03/2018 until a new development contribution scheme is adopted by the planning authority”. It is pointed out that Circular PL03/2018 states that

“Those local authorities who have not yet done so should now ensure that their Development Contribution Schemes are updated accordingly as soon as possible”

- Maps are provided of the existing level of existing 4G coverage for various mobile network operators. The proposed development will provide capacity for Vodafone, Eir and Three to install equipment, future technologies and improve coverage in the surrounding area.
- The required contribution is considered unreasonable given that there would be no additional demand for new, upgraded or additional infrastructure or services. The proposed development is a stand-alone, unmanned telecommunications installation which will utilise and existing access at an established Eir Exchange site.
- The requirement for this contribution is inconsistent with planning decisions made by the Board, by other planning authorities and by Kerry County Council. An appeal was withdrawn (ABP.308368) because Louth Co. Co. acknowledged that the attachment of such a condition was inconsistent with Circular PL03/2018 and waived the requirement. KCC granted permission recently (Reg. Ref. 20/1151) for a 30m high lattice mast at Eir Exchange, Tiernaboul Industrial Estate, Killarney and no condition requiring a development contribution was attached to this permission.

7.0 Assessment

7.1. Legislation and Guidance

Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied. As the appeal is solely against Condition 2 of the planning permission, relating to a Financial Contribution, Section 48 (10)(c) applies. This requires that the Board shall not determine the relevant application as if it had been made in the first instance but shall determine only the matters under appeal.

Condition 2 requires the payment of a development contribution of **€10,000.00** in respect of public infrastructure and facilities benefitting development in the area in accordance with the terms of the adopted Kerry County General Development Contribution Scheme, made under Section 48(2)(a) of the Act. Further guidance on the matter is provided in the Development Management Guidelines, 2007 (Section 7.12) and in the Development Contribution Guidelines 2013, as amended by Planning Circulars 07/12 and 03/2018.

I consider that it is therefore appropriate that this appeal should be confined to the consideration of whether or not the terms of the Kerry County Council Section 48 Development Contribution were properly applied in this instance.

7.2. Compliance with the terms of the General Development contribution Scheme

The GDCS adopted by Kerry County Council in 2017 requires the payment of a development contribution in respect of masts, antennae, dish and other apparatus/equipment for communication purposes at a rate of €10,000. However, where such structures and equipment form part of the National Broadband Scheme (NBS) as defined by the Dept. of Communication, Energy and Natural Resources (DCENR), a reduction of 100% will be applied. The Planning Authority contends that

as the developer has not provided to demonstrate that the development is being provided in connection with the NBS, the reduction does not apply in this case.

The National Broadband Scheme has since been replaced by the National Broadband Plan. This is described on the Dept. of Environment Climate and Communications (formerly DCENR) website as follows:

“The National Broadband Plan is the government’s initiative to deliver high speed broadband services to all premises in Ireland. This will be delivered through investment by commercial enterprises coupled with intervention by the state in those parts of the country where private companies have no plans to invest”

Circular 03/2018 referred to outdated terms contained in Local Authority Development Contribution Schemes including the ‘National Broadband Service’ and required Local Authorities to update such references ‘at the next available opportunity’.

The main purpose of PL03/2018 was to extend the waivers required by Circular 07/12 in relation to broadband infrastructure to include mobile phone infrastructure and services. Specifically, it was stated that the waiver shall apply to any telecommunications infrastructure, both mobile and broadband, being deployed as part of a Government endorsed telecommunications strategy, plan or initiative. Thus, where a developer can demonstrate that their infrastructure provides services to customers who would not otherwise be able to avail of an adequate mobile or broadband service, it was stipulated that such infrastructure shall not attract development contributions.

I am satisfied that the nature of the proposed development and the infrastructure that is to be provided would satisfy these requirements and can be considered to be in accordance with the Government endorsed initiative, the National Broadband Plan. It is considered that the proposed development is one which qualifies for the 100% reduction as set out in the GDCS and should not therefore attract a development

contribution charge. It is further considered that the planning authority has failed to correctly apply the terms and conditions of the Development Contribution Scheme.

7.3. Requirements of Circular PL03/2018

The planning authority has indicated that as the GDCS was adopted in advance of the publication of Circular 03/2018, that the decision to impose the contribution charge was in accordance with the terms of the GDCS. I note, however, that the Circular, which was issued in July 2018 under section 28(1C) of the Planning and Development Act 2000 (as amended), states that it is mandatorily required to be applied by planning authorities. The extension of the waiver to include mobile phone infrastructure arose from the Report of the Mobile Phone and Broadband Task Force which had recommended that the Development Contribution Guidelines be revised accordingly. In light of this, the Circular states that, 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 is considered, therefore, that the publication of the Circular subsequent to the adoption of the GDCS by Kerry County Council does not justify the failure to apply the waiver/reduction in this instance.

7.4. Precedent

The appellants have referred to several Board decisions and some planning authority decisions where the requirement to pay a development contribution in similar such circumstances has been waived. I have reviewed the cases referred to in the grounds of appeal and would agree that there is a degree of consistency in recent Board decisions on these matters. I would refer the Board to the decisions in respect of ABP.300904 and ABP.300853 in particular, where the Board had decided to remove such conditions. It is considered that the application of the 100% reduction in this instance would be consistent with previous decisions regarding similar matters.

8.0 Recommendation

Having regard to the nature of the condition the subject of the appeal and to the information submitted in support of the appeal, I am 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. I recommend that the Board directs the Planning Authority under Section 48 of the Planning and Development Act, 2000 to **REMOVE** Condition No 2 and the reason therefor for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the:

- a) Kerry County Council Development Contribution Scheme 2017 which includes a reduction of 100% for 'masts and antennae, dish and other apparatus/equipment for communications purposes which form part of the National Broadband Scheme as defined by the Department of communication, Energy and Natural Resources (DCENR)'
- b) Circular Letter 07/12 issued from the Department of the Environment, Community and Local Government and Circular and PL03/2018 issued by the Department of Housing, Planning and Local Government under Section 28 of the Planning and Development Act 2000 (as amended), which requires that planning authorities revise their development contribution schemes in order that a waiver be provided for broadband and mobile phone infrastructure (masts and antennae) being deployed as part of a Government endorsed telecommunications strategy, plan of initiative from the requirement to pay development contributions and

c) The information submitted in support of this appeal,

it is considered, based on the evidence submitted, that the proposed development constitutes infrastructure and equipment for communication purposes that form part of a government endorsed telecommunications strategy for the roll out of broadband and mobile services and that the terms of the planning authority's Development Contribution Scheme have not been properly applied. The condition requiring the payment of the contribution should therefore be removed in order to comply with Section 48(2)(c) of the Planning and Development Act 2000, as amended.

Mary Kennelly

Senior Planning Inspector

16th June 2021