



An
Bord
Pleanála

Inspector's Report

ABP.310748-21.

Development

Erect 18m high monopole
telecommunications support
structure with antennae, link dishes
and associated equipment and
fencing at Dromultan, Scartaglen,
Co. Kerry

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

21/410

Applicant(s)

Eircom Ltd.

Type of Application

Permission.

Planning Authority Decision

Grant s.t. conditions

Appellant(s)

Eircom Ltd.

Observer(s)

None.

Inspector

Mary Kennelly

1.0 Site Location and Description

1.1 The appeal site with a stated area of 0.071 ha is located at Dromultan, Scartaglen, Co Kerry. The village of Scartaglen is located on the R577 which links Castleisland with Ballydesmond. The site is situated approx. 700m to the northwest of the village on a local road just off the R577. There is a ribbon of one-off houses to the east and a GAA grounds on the opposite side of the road. The site consists of an existing Eir exchange which accommodates an exchange building and a wall mounted pole with attached equipment. The site is quite narrow (just under 15m) and is well screened by mature vegetation to the east, west and north, with a masonry wall along the roadside boundary. There is an existing house located on either side of the site to the east and to the west with an electricity overhead line passing through the front section of the site.

1.2 The existing exchange building is set back into the site by approx. 24 metres. The site is grassed with a concrete path to the front and scrub to the rear. The site of the proposed monopole structure is to the rear of the existing exchange building.

2.0 Proposed Development

2.1. This is an application for the erection of an 18-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 to the rear of the existing building. The proposed compound measures 4m x 4m and the new pole would be set back approx. 33m from the roadside boundary. The proposed communication installation will be connected directly to the Exchange building.

2.2. The application was accompanied by a cover letter and a letter from Eircom setting out the background to the case and justification for the need for the development. It

is stated that the proposed development will provide fast speed internet broadband and mobile connectivity to Eircoms networks. It is stated that Eircom Ltd. does not currently provide adequate service for high-speed mobile broadband in and around the village and it needs to significantly improve its service provision at this location.

- 2.3. The site of the proposed Eircom infrastructure at Scartaglin 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 Scartaglin 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. The proposed development will provide essential telecommunications coverage to the area and is strategically important to the provision of mobile and broadband infrastructure and services to the local community, businesses and tourism.

3.0 Planning Authority Decision

- 3.1. Kerry County Council granted planning permission subject to 4 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 4 conditions, including Condition 2 requiring the payment of a Development Contribution in accordance with the GDSCS.

There is a note at the end of the Area Planner's Report from the Senior Executive Engineer (9/06/21) which acknowledges the provision in the Kerry GDSCS for 100% reduction in respect of masts which form part of the National Broadband Scheme and to infrastructure provided in support of the Community Broadband Scheme. However, it was considered that no details had been provided by the applicant connecting the proposed development to either the National Broadband Scheme or the Community Broadband Scheme. On this basis, it was considered that a development contribution condition should be included.

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.

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. In respect of telecommunications infrastructure, 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”.

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. Conditions restricting planning permissions to temporary periods (normally 5 years) were recommended.

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 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 terms of the Kerry Co. Co. Development Contributions Scheme have not been properly applied. 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 -

“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 represents much needed enhanced broadband provision to the village of Scartaglin and its surrounding

area. At present the current sites do not provide adequate service for high-speed mobile broadband in and around the village. The provision of such infrastructure is in accordance with the waivers provided for in the current GDCS for Kerry.

2. Circular PL07/12 recommends waivers of levies for the facilitation of broadband infrastructure

The proposed development is for wireless 3G coverage which allows for mobile broadband and smart phone technology, and this will be enhanced in the coming months to allow for 4G technology, again broadband technology.

3. Development Contribution guidelines (2013) require waivers for broadband infrastructure

The guidelines require that Development contribution Schemes should contribute to the promotion of sustainable development and economic activity and specifically should include waivers for broadband infrastructure (masts and antennae).

4. 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 for the purposes of improving mobile phone coverage in their areas. Local authorities were required to amend their Development Contribution Schemes accordingly. As such, the waiver should be applied to the proposed development.

The proposed development will enhance and improve telecommunications and broadband services in the area in accordance with national and local policy.

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 has not responded to the grounds of appeal.

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 Scheme 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 information to demonstrate that the development is being provided in connection with the NBS or the Community Broadband Scheme, 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 makes reference 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.

Circular PL03/2018, 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 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. 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. 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 GDSC and should not therefore attract a development contribution charge. In this respect, it is considered that the planning authority has failed to correctly apply the terms and conditions of the Development Contribution Scheme.

7.3. Precedent

There have been several recent Board decisions and planning authority decisions where the requirement to pay a development contribution in similar such circumstances had been waived. I have reviewed some of these cases and consider that there is a degree of consistency in recent Board decisions on these matters. The following is a brief summary of some of these cases. I would refer the Board to the

decisions in respect of ABP.300904 and ABP.300853 in particular, where the Board decided to remove such conditions.

PL10.248622 (Reg Ref 17/161) – This was an appeal by Cignal 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 Cignal 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.

In conclusion, it is considered that the application of the 100% reduction in this instance would be consistent with previous decisions regarding similar matters. It is considered that the requirement to pay a development contribution in respect of the proposed mast is not in accordance with the terms of the planning authority's adopted Development Contribution Scheme or with Government guidance on the matter.

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

12th November 2021