



An
Bord
Pleanála

Inspector's Report

ABP-310805-21

Development	Retain existing 7.5m high telecommunications support pole with antennas, link dishes and associated telecommunications equipment and security fencing
Location	Carrickbeg Hill, Carrick Beg, Carrick-on-Suir, Co. Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	21357
Applicant(s)	OnTower Ireland Ltd
Type of Application	Retention
Planning Authority Decision	Grant
Type of Appeal	First Party (Against S.48 Condition)
Appellant(s)	OnTower Ireland
Observer(s)	None
Date of Site Inspection	8 th October 2021
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The site is in a rural area to the north of Carrick-on-Suir, in County Waterford. It is accessed by a narrow Local Secondary Road (the L7096), which runs along the site's southern boundary.
- 1.2. The site accommodates existing telecommunications equipment, including a support pole with antennas, satellite dishes, storage cabinets and security fencing.
- 1.3. The surrounding area is rural in nature with the predominant land use being agriculture and forestry. There are a small number of detached dwellings in the vicinity, the nearest of which are situated to the north.

2.0 Proposed Development

- 2.1. The proposed development is for retention of the 7.5m high telecommunications support pole and ancillary equipment and works.
- 2.2. A five-year temporary permission for the development was granted in October 2005 under Reg. Ref. 05/982, which has since elapsed. It is now the Applicant's intention to regularise the existing development by way of obtaining a permanent grant of permission.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission on 22nd June 2021, subject to 5 no. conditions. The conditions are mainly standard in nature. Condition No. 2 is notable, however, which requires the Applicant to pay a financial condition in the order of €10,000. The Applicant is appealing this condition.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The following are the main issues raised in the Council Planner's Report:

- The structure is located on a well-screened site setback from the road. It is not in a designated area in the Scenic Landscape Evaluation as per the Development Plan.
- Variation No. 1 (Development Management Standards) of the Development Plan 2011-2017 (as extended), contains guidance on telecommunication structures in Section 8.9. It states that regard should be had to the relevant Ministerial Guidelines, including *Telecommunications Antennae & Support Structures Guidelines for Planning Authorities, 1996*.
- Having regard to the site, height of the structure to be retained and the receiving landscape, it is considered that the retention of the structure would not have an adverse impact on the visual amenities of the area. The report recommended that permission be granted.
- A financial contribution for the retention of the mast is levied as no such contribution was previously applied. Total contribution for a telecommunications mast is €10,000, which is in accordance with the Council's Development Contributions Scheme.

3.2.2. Other Technical Reports

None.

4.0 Planning History

Reg. Ref. 05982: On 24th October 2005, a temporary five-year permission was granted for an 8m timber pole with 3 no. antennae, a radio link dish, associated equipment and storage cabinet. The permission has since expired.

5.0 Policy Context

5.1. Waterford County Development Plan 2011 – 2017 (as extended)

- 5.1.1. The subject site is zoned ‘Green Belt’ under the ‘Waterford County Development Plan 2011 – 2017 (as extended)’, which seeks *“to provide for a green belt area as a clear physical demarcation to the adjoining urban area, to provide for the development of agriculture and to protect and improve rural amenity and to restrict residential development”*.

5.2. Waterford City & County Council Development Contribution Scheme 2015 – 2021

- 5.2.1. The ‘Waterford City & County Council Development Contribution Scheme 2015 – 2021’ took effect on 12th February 2015 (‘the Scheme’).
- Section 6(B) ‘Non-Residential Development’ requires payment of a development contribution of €10,000 for a telecommunications mast.
 - Section 7(9) ‘Non-Residential Exemptions’ lists that broadband infrastructure (i.e. masts, dishes, and antennae) as exempt from having to pay a development contribution.
 - Section 10 ‘Retention of Development’ states that applications for retention will be charged at the full rate under the scheme. No exemptions or reductions shall apply.

5.3. Guidelines for Planning Authorities on Telecommunications Antennae and Support Structures issued (1996)

- 5.3.1. The ‘Guidelines for Planning Authorities on Telecommunications Antennae and Support Structures’ (1996) set out government policy for the assessment of proposed new telecommunications structures (‘the 1996 Guidelines’).

5.4. **Guidelines for Planning Authorities on Development Contributions (2013)**

- 5.4.1. The 'Guidelines for Planning Authorities on Development Contributions (2013)' set out government policy for Planning Authorities for preparing and adopting development contribution schemes.

5.5. **Circular Letter PL07/12 (2012)**

Circular Letter PL07/12, was issued on 19th October 2012, and revised elements of the 1996 Guidelines under Section 2.2 to 2.7. The Circular advises Planning Authorities to:

- Cease attaching time limiting conditions or issuing temporary durations to telecommunications masts, except in exceptional circumstances.
- Avoid including minimum separation distances between masts or schools and houses in Development Plans.
- Omit conditions on planning permissions requiring security in the form of a bond/cash deposit.
- Not include monitoring arrangements on health and safety or to determine planning applications on health grounds.
- Include waivers on future development contribution schemes for the provision of broadband infrastructure.

5.6. **Circular Letter PL03/2018 (2018)**

- 5.6.1. Circular Letter PL03/2018, was issued on 3rd July 2018, and advised Planning Authorities and the Board, of changes to the '*2013 Development Contribution Guidelines for Planning Authorities*' ('the 2013 Guidelines').
- 5.6.2. The Circular recommended that the 2013 Guidelines be revised to ensure that waivers are applied in Development Contribution Schemes in respect of both mobile phone and broadband infrastructure. It also instructed that those Local Authorities who have not yet done so, should now ensure that their Development Contribution Schemes are updated accordingly, and as soon as possible.

5.7. Natural Heritage Designations

There are no designated European sites within the vicinity of the subject site. The Lower River Suir Special Area of Conservation (SAC) (Site Code: 002137) is approximately 620 metres to the north of the site.

5.8. EIA Screening

- 5.8.1. The proposed development, which is for retention of a telecommunications support structure and ancillary equipment, is not a class of development for which EIA is required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A First Party Appeal against Condition (No.2) has been lodged by Charterhouse Infrastructure Consultants on behalf of the Applicant (OnTower Ireland Ltd). The main grounds of appeal are as follows:
- The Appellant states that the appeal is solely concerned with the application of a financial contribution and does not seek to appeal the other ('non-financial') conditions attached to the Grant of Permission.
 - The Planning Authority has acted incorrectly in applying the provisions of an outdated Development Contributions Scheme (2015-2021), which preceded the changes introduced under Government Circular PL03/2018. [The Council's Development Contributions Scheme conflicts with said Circular, and it is mandatory for all Councils to apply it correctly.]
 - The Circular states that a special waiver for development that includes the provision of broadband infrastructure (masts and antennae) should be applied in making a Planning Decision. The waiver states:

"This waiver shall apply to telecommunications infrastructure, both mobile and broadband, being deployed as part of a Government endorsed telecommunications strategy, plan or initiative".

- The Appeal states that because the broadband waiver was disregarded by the Planning Authority in making their Decision, Condition No. 2 is not in accordance with the relevant Ministerial Guidelines. Therefore, the condition should be removed.
- While the current Contribution Scheme requires payment of a financial contribution, the development in question is exempt under the provisions of *The Telecommunications Antennae & Support Structures Guidelines for Planning Authorities, 1996*.

6.2. Planning Authority Response

The main comments are as follows:

- It is the policy of the Planning Authority to levy contributions on telecommunications structures, where no contributions have been levied in respect of such structures that were permitted under a previous planning Decision.
- A temporary permission was granted for a 7.5m high telecommunications mast under Reg. Ref. Pd05/982. The permission did not include a condition for payment of financial contributions.
- Section 6(b) of the Waterford City and County Council Development Contributions Scheme 2015-2021 attracts a development contribution for a telecommunications mast, which is €10,000.
- Permission was granted for the indefinite retention of the telecommunications mast under Reg. Ref. Pd 21/357 (i.e. not a temporary permission). The Planning Authority, therefore, considers the payment of a development contribution as reasonable.

7.0 Assessment

- 7.1. The sole planning consideration relevant to this appeal case is whether the Applicant should be required to pay a development contribution in respect of the development, which is for retention of an existing telecommunications' mast and associated equipment.

- 7.2. The proposed development is in accordance with the Development Plan policy and is considered acceptable. The appeal, therefore, is confined to the matters concerning the specific condition, which the Applicant has appealed, and which, in this case, can be treated under Section 48(10)(b) of the *Planning and Development Act, 2000 (as amended)*.
- 7.3. Condition No. 2 requires the Applicant to pay a development contribution in the order of €10,000. The Planning Authority granted permission for a temporary period, lasting 5 years, in October 2005 (Reg. Ref. 05/982). The permission, therefore, expired many years ago. No development contribution condition was applied under that permission, or any other.
- 7.4. I note that according to the Guidelines for Planning Authorities on Development Contributions (2013), waivers for broadband infrastructure (masts and antennae) should be included in Council Development Contribution Schemes. Furthermore, all Planning Authorities were required to commence a review of their existing development contribution schemes by 31st March 2013 to ensure compliance with this guidance.
- 7.5. The Applicant submits that the Planning Authority has erred by way of applying the provisions of an outdated Development Contributions Scheme (2015-2021), and which has not been updated to reflect recent government advice. However, in my view, the Planning Authority has correctly applied the Guidelines, and the inclusion of Condition 2 is appropriate and reasonable, as I will outline below.
- 7.6. The role of the Board is confined to assessing whether the terms of the Council's Development Contribution Scheme have been correctly applied under the relevant legislation, which, in this case, is Section 48(10)(b) of the *Planning and Development Act, 2000 (as amended)*. The Board, therefore, has no function in reviewing or determining if a Council's Development Contribution Scheme has been correctly prepared and / or adopted.
- 7.7. Furthermore, I note that the Guidelines for Planning Authorities on Development Contributions (2013) require waivers for broadband infrastructure (masts and antennae); but also, that it states such waivers should not apply to retention permissions. Specifically, the Guidelines state under the heading 'Retention Permission, on Page 11, that "*no exemption or waiver should apply to any*

applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications”.

- 7.7.1. Section 6(B) of the Scheme requires payment of a development contribution (€10,000) for a telecommunications mast. However, Section 7(9) of the Council’s Scheme lists a number of ‘Non-Residential Exemptions’, which includes ‘Broadband infrastructure (i.e. masts, dishes and antennae)’. Such an exemption generally means that no development contribution should be levied against such a category of development. However, as retention permission is being sought in this case, the exemption for the provision of broadband infrastructure does not apply. Section 10 of the Council’s Development Contribution Scheme is relevant, and states that applications for retention permission will be charged at the full rate under the scheme, and no exemptions or reductions shall apply.
- 7.8. Therefore, whilst the Development Contributions Guidelines for Planning Authorities, 2013, requires waivers for broadband infrastructure (masts and antennae), this does not include any development proposal seeking retention permission.
- 7.9. In summary, as retention permission is being sought in this case, and as no previous development contribution was applied to the previous permission (Reg. Ref. 05/982) (i.e. ‘no double charging’), I consider that the terms of the Council’s Contributions Scheme have been correctly applied by the Planning Authority, and the condition should not be omitted.

8.0 Recommendation

I recommend, based on the reasons and considerations below, that the terms of the Council’s Development Contribution Scheme for the area have been properly applied in respect of Condition No. 2, and the condition should not be omitted.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the *Waterford City & County Council Development Contribution Scheme 2015 – 2021; Guidelines for Planning Authorities on Development Contributions (2013);* Section 48(10)(b) of the *Planning and Development Act, 2000 (as amended);* and that there is no provision within the

Development Contribution Scheme for an exemption for a development for retention permission (including that of 'Broadband infrastructure'), and that a financial contribution was not levied under any previous permission for the development, it is considered that the terms of the Council's Development Contribution Scheme for the area have been properly applied by the Planning Authority in respect of Condition No. 2.

9.2. It is considered that the wording of the condition should be amended to reflect the format of previous Board decisions, as follows:

1.	<p>The developer shall pay to the planning authority a financial contribution of €10,000 in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Ian Boyle
Planning Inspector

27th October 2021