



An
Bord
Pleanála

Inspector's Report

ABP-310949-21

Development	Retention permission for development of existing telecommunications support structure (previously granted under Plan Ref No. 06/763) together with associated ground equipment cabinets within a fenced compound and access track.
Location	Stramore, Emyvale, Co. Monaghan.
Planning Authority	Monaghan County Council.
Planning Authority Reg. Ref.	21278
Applicant	Ontower Ireland Limited.
Type of Application	1 st Party – Condition No. 1.
Planning Authority Decision	Grant.
Type of Appeal	First Party.

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1.0 Site Location and Description

1.1. The appeal site has a stated 0.004ha and it is located in the Townland of Stramore, c2.4km to the west of the settlement of Glaslough and c2.9km to the south east of the settlement of Emyvale, in the rolling drumlin landscape of County Monaghan. The site is located at the end of a cul-de-sac modest in width lane and contains an existing telecommunications mast, its associated infrastructure and its boundaries consisting of palisade security fencing. The site is situated in predominantly agricultural landscape setting.

2.0 Proposed Development

2.1. Retention permission for development of existing telecommunications support structure (previously granted under Plan Ref No. 06/763) together with associated ground equipment cabinets within a fenced compound and access track.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant retention permission for the proposed development set out in Section 2.1 above subject to 7 no. mainly standard conditions. Of relevance to this particular appeal is the requirements of Condition No. 1 which reads:

“a. *The developer shall pay to Monaghan County Council a sum of €10,420.00 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.*

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 (Material 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.*

Reason: It is considered appropriate that the developer should contribute towards the expenditure incurred or proposed to be incurred by the Council in the provision of community, recreation and amenity infrastructure and facilities in the area.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer’s report, dated the 25th day of June, 2021, is the basis of the Planning Authority’s decision. This report concludes that the proposed retention development complies with Ministerial Guidelines and the telecommunications provisions of Monaghan County Development Plan, 2019-2025 and the proper planning and sustainable development of the area. Therefore, a grant of retention permission subject to conditions is recommended.

Of relevance to the grounds of this appeal attached to this report is a Development Contribution calculation.

3.2.2. Other Technical Reports

Environmental: In a report dated the 8th day of June, 2021, it is noted that no water protection plan checklist has been submitted with this application. It is therefore recommended that permission for retention should be subject to four recommended conditions that deal with this particular concern.

3.3. Prescribed Bodies

- 3.3.1. None.

3.4. Third Party Observations

- 3.4.1. None.

4.0 Planning History

4.1. Site

- **P.A. Ref. No. 01/1096:** Planning permission was granted subject to conditions for a 30-meter-high antennae support structure and associated equipment.
- **ABP-PL.219090 (P.A. Ref. No. 06763):** Retention permission was granted subject to conditions for an existing 30 metres telecommunications mast, carrying antennae, link dishes and associated equipment container, security fencing and access track. This appeal related to a bond payable to the Council.

5.0 Policy Context

5.1. National Policy Provisions

5.1.1. These include but are not limited to the following in relation to the type of development proposed under this application:

- **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.

- **Circular PL 03/2018.**

This circular seeks to ensure a consistent approach is applied by all local authorities in respect of waivers applied in Development Contribution Schemes in respect of mobile phone and broadband infrastructure. It sets out 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.

- **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.

- **National Broadband Plan, 2020.**

This document sets out 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.

5.2. Development Plan

- 5.2.1. **Monaghan County Development Plan, 2019 to 2025**, is the applicable Development Plan. The site is located in unzoned rural land outside of settlement.
- 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. Other

- 5.3.1. Monaghan County Council General Development Contribution Scheme, 2021 to 2026 is the applicable contribution scheme.
- 5.3.2. Section 5 sets out the basis of the scheme.
- 5.3.3. Section 7 sets out that in general all planning permissions granted by the Council will be subject to the Development Contribution Scheme.
- 5.3.4. Section 17 sets out the Development Contribution in Respect of Telecommunications Developments.
- 5.3.5. Section 18 sets out that exemptions/reductions set out under Section 19 will not be applicable in respect of permissions for retention development.
- 5.3.6. Section 19 sets out that the Planning Authority may allow full or partial exemptions from payment at its discretion, and it indicates that the onus shall be on the applicant to demonstrate that the development would be a type that would qualify for the same.

5.4. Natural Heritage Designations

- 5.4.1. The nearest European site is located c8.3km to the west of the site. This site is Slieve Beagh Bog SPA (Site Code: 004167). There are no other European sites within the wider vicinity of the site.

5.5. EIA Screening

- 5.5.1. The development sought under this application relates to a retention of an existing telecommunications infrastructure and associated works. It 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 1st Party Appeal were received by the Board on the 23rd day of July, 2021, and includes the following comments:

- This appeal is made under Section 48(10)(b) and relates to Condition No. 1 only.
- The proposed site is designed to support 3G and 4G broadband communications for multiple operators. As such it will bring significant improvement in the provision of mobile and broadband data services to the Stramore, Emyvale and surrounding areas in this part of County Monaghan.
- The Council in relation to Condition No. 1 has not properly applied the Monaghan County Council General Development Contribution Scheme 2013 – 2019 (as revised).
- Reference is made to the Development Contributions Guidelines for Planning Authorities.
- The permitted development accommodates the local and National Broadband provides/operators with the intention of bringing significant improvements in the provision of mobile and broadband data services for Stramore, Emyvale and the surrounding areas of County Monaghan.
- Reference is made to Circular PL03/2018 in relation to the provisions it sets out for waivers for telecommunication infrastructure with this waiver being extended to include mobile phone infrastructure.
- In light of Circular PL03/2018 the contributions set out under Condition No. 1 were incorrectly imposed.
- This development seeks to deliver upon the Governments National Broadband Plan by installing the required infrastructure to facilitate broadband provision and

provide voice and 3G/4G connectivity for broadband data services to the widest catchment. Therefore, circumventing the capital cost to the state.

- The high data transmission rates on which 3G/4G Broadband depend can only be achieved in proximity to a base station site. Therefore, location is the primary determinant in the quality of communications services and area enjoys. At present the service in this area is hampered by a lack of a localised base station.
- The proposed development forms part of the Government endorsed telecommunications strategy known as the National Broadband Plan, and thus it should benefit in full from the waiver as per the exemptions in Section 19 of the scheme.
- The vital services provided to the area by telecommunication infrastructure is often overlooked with developments of this nature vastly improving commercial prospects in the area and assisting in social inclusion.
- Reference is made to Circular PL07/12 which sets out that contribution schemes must include waivers for broadband infrastructure provision.
- Reference is made to Circular PL08/2018 which requires the waivers for broadband infrastructure (masts and antennae) be extended to include mobile phone infrastructure.
- The Report of the Mobile Phone and Broadband Taskforce acknowledges the importance of private investment in the provision of increased and improved communication services.
- This development represents a commercial private investment in capital infrastructure and economic activity as proposed in the actions of the Taskforce report and as outlined in the 2013 Guidelines. At present the service achievable is hampered by a lack of telecommunications structures.
- The subject site is designed as a multi-user site and is a site that is required by a number of operators who are looking at expanding their services in this area.
- Reference is made to the Boards determination of appeal case PL10.248622 and ABP-302609-19.
- The Board is requested to omit Condition No. 1.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response, was received on the 15th day of September, 2021, and includes the following comments:

- The merits of the terms of the scheme or the amount of development contribution applied to types of development are not for consideration as these are matters addressed during the formulation of the scheme.
- At the time of the decision the previous Monaghan County Council Development Contribution Scheme 2013-2019, as revised, was in force. Section 7 of this scheme states: "*in general all planning permissions granted by Monaghan County Council will be subject to the Development Contribution Scheme and development charges shall be levied as a condition under any permission issued under Section 34 of the Planning & Development Acts 2000 (as amended).*" This therefore clearly states that all planning permissions are subject to the subject specified development contribution charges within the scheme where appropriate. This included development contribution charges towards community, recreation, and amenity facilities with a category specific to telecommunications (Category 3(n)).
- In accordance with Section 2 of the Development Contributions Guidelines for Planning Authorities 2013 the Council included a waiver in respect of development solely for broadband.
- The Council is one of 26 local authorities that has ceased applying charges for broadband infrastructure, but the charges can still be levied on telecommunications development that is not solely for broadband provision.
- A new contribution scheme was adopted on the 26th day of September, 2021. The contribution for the development permitted under this application was calculated on the 28th day of June, 2021, and the method of calculation of the contribution is set out.
- The proposed development did not solely relate to broadband infrastructure and as such the exemption for broadband infrastructure was not applicable.
- Reference is made to Section 17 of the previous scheme, and it is considered that as the proposed development is for the permanent retention of a telecommunication development previously given temporary planning permission

under P.A. Ref. No. 06/763 and no development contribution was previously levied and paid for by that development, then the Section 17 requirement is applicable in this case.

- The applicants have not demonstrated that they would qualify for an exemption under the current 201-2026 scheme.
- In accordance with Circular PL 03/2018 a new scheme has incorporated the following exemption to supersede the previous exemption requirement of telecommunications development which is solely for the provision of broadband infrastructure.
- Circular PL 03/2018 indicates that a 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 appellant has provided no information that this would be the case.
- Circular PL 03/2018 indicates that operators must demonstrate to the satisfaction of the planning authority that their infrastructure provides services to customers who would not avail of an adequate mobile or broadband service to avail of exemptions from development contributions. The appellant has not demonstrated this to be the case.
- Section 17 of the previous development contribution scheme has been incorporated with the current development contribution scheme and thus remains applicable.
- The appellant has not demonstrated that they are part of the National Broadband Plan which involves state intervention in the provision of telecommunications broadband.
- The appellant argues that the waiver for telecommunications development referred to in the Development Contributions Guidelines for Planning Authorities, 2013, must be applied to the proposed development.
- It is understood that the purpose of the National Broadband Plan is to intervene in areas where the market will not provide any or sufficient broadband coverage to an area without coverage or to provide adequate coverage to an area with poor coverage.

- The Monaghan County Development Plan encourages co-location of telecommunications apparatus and thus the proposed development has been permitted on the basis that it will facilitate the same.
- The two appeal cases referred to as references by the appellant relate to different circumstances.
- The telecommunications development solely for the provision of broadband infrastructure only is subject to an exemption and it is noted that the proposed development will facilitate voice connectivity as well as broadband provision therefore the exemption cannot be applied.
- The exemption under the new scheme cannot be satisfied either as the appellant has not demonstrated how this development is considered to be part of the National Broadband Plan with no confirmation from the Department of the Environment, Climate and Communications provided. And no evidence has been provided to demonstrate that customers in this area would not otherwise avail of an adequate mobile or broadband service to avail of the waiver. Particularly as the existing communications has been present on the site since 2007. Therefore no waiver incentivise private provision at this location is applicable.
- Reference is made to the following Board appeal cases: PL18.249028; ABP-304847-19; ABP-304681-19; and ABP-308443-20. These are considered to be similar precedent cases where the Board determined that the Council had properly applied the terms of their development contribution scheme.
- Reference is made to the following Board appeal cases: PL18.248750 and PL18.248753 which are considered to be similar cases where the Board determined that the principle of the contributions had been properly applied but slightly reduced amounts concluded upon.
- The terms of the previous development contribution scheme have been properly applied by the Council and the appellant has provided no evidence to demonstrate otherwise.
- A copy of the new scheme is attached.

6.3. Appellants Response to the Planning Authority's Response

- 6.3.1. I have read this submission and it raises no new issues but rather seeks to build upon the grounds as to why in their view the Planning Authority have misinterpreted the applicable contribution scheme.

7.0 **Assessment**

- 7.1. 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.
- 7.2. I note that Condition No. 1 requires the developer to pay the sum of €10,420.00 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.
- 7.3. 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.
- 7.4. 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 was no longer in place and had been superseded by the Monaghan County Council General Development Contribution Scheme 2021-2026. Therefore, the terms of this new scheme are now applicable.
- 7.5. Section 7 of the said scheme sets out that in general all permissions granted by the Council will be subject to this development contribution scheme and that the development charges shall be levied as a condition under any permission issued under Section 34 of the Planning & Development Acts, 2000, as amended.
- 7.6. I note that retention permission was granted for the development sought under this application on the 28th day of June, 2021, subject to conditions which included

Condition No. 1 requiring the payment of the sum of €10,420.00 as a development contribution.

- 7.7. The type of development sought under this application essentially related to retention of permission of an existing telecommunications support structure which was previously granted temporary planning permission under P.A. Ref. No. 06/763 together with associated ground equipment cabinets within a fenced compound and accessed by way of an access track serving it.
- 7.8. I note that Section 17 of the scheme sets out the development contribution in respect of Telecommunications Developments. It states: "*development contributions shall not be levied in respect of any telecommunications infrastructure (masts, antennae, dishes and other apparatus or equipment being installed for such communication purposes) being deployed as part of a Government endorsed telecommunications strategy, plan or initiative, or where mobile or broadband operators demonstrate to the satisfaction of the planning authority that the proposed telecommunications development provides services to customers who would not otherwise be able to avail of an adequate mobile or broadband service*".
- 7.9. On this component of Section 17 the appellant argues in their submission to the Board that this development though being in place since 2007 will deliver on the Government's National Broadband Plan and the development contribution as it constitutes broadband infrastructure (mast and antennae) for mobile and broadband data purposes which is an endorsed initiative by the Department of Communication, Energy and Natural Resources.
- 7.10. They further contend that the 'proposed development' will bring significant improvement in the provision of mobile and broadband data services to the Stramore, Emyvale and surrounding areas in this part of County Monaghan. As a result, they content that the proposed development is consistent with the provisions of Circular PL03/2018.
- 7.11. Having regard to the document on file the appellant does not demonstrate by way of any substantive evidence that they have been deployed as part of a government endorsed telecommunications strategy, plan, or initiative.

- 7.12. The development as sought is for retention with the construction of this telecommunication mast occurring in c2007. Thus, significantly predating the referred to government initiative.
- 7.13. The appellants have not demonstrated by way of any substantive evidence that the proposed telecommunications development provides services to customers who would not otherwise be able to avail of an adequate mobile or broadband service at this locality. Again as stated this telecommunication infrastructure has been in situ since c2007.
- 7.14. In addition, I note that Section 17 of the scheme further states: “*where planning permission is granted for the permanent retention of telecommunications developments previously given temporary planning permission, no development contributions shall be levied where development contributions were previously permitted is proposed. Development contributions will be levied (where determined appropriate) in respect of any additional development proposed over that previously permitted.*”
- 7.15. As set out previously in this report this application relates to retention permission of a permanent nature and having regard to the documentation provided there is no evidence that supports that development contributions have been paid previously and I note that no additional development is proposed under this application over that previously permitted.
- 7.16. Section 18 of the scheme deals with the matter of retention permission, and it sets out that exemptions/reductions set out in Section 19: “*will not be applicable in respect of permission for retention permission*”.
- 7.17. This section of the scheme also sets out in respect of retention and completion of partially constructed developments that development contributions will be levied on the current charges set out in Appendix 3. This development is completed, and no new works are proposed.
- 7.18. Section 19(e) sets out that a 100% exemption from all development contribution charges in relation to: “*any telecommunications infrastructure (masts, antennae, dishes and other apparatus or equipment being installed for communication purposes) being deployed as part of a Government endorsed strategy, plan or initiative, or where mobile or broadband operators demonstrate to the satisfaction of the planning*

authority that the proposed telecommunications development provides a service to customers that would not otherwise be able to avail of any adequate mobile or broadband service and where the new development does not place a demand for new, upgraded or additional infrastructure services”.

7.19. In respect to Section 19(e) as previously set out the appellant in this case has not provided any evidence to support that they have been deployed as part of a Government endorsed strategy, plan, or initiative. I reiterate that this telecommunications infrastructure has been in situ since 2007 as a private infrastructure project for which the needs of mobile and broadband private telecommunications service providers customers in this locality could be provided for.

7.20. In respect of the various appeal cases noted by both the appellant and the Planning Authority as supporting precedent for their positions, alongside the fact that I have been the reporting Board Inspector for a number of the cases referred to within the administrative area of Monaghan County Council, I note that the Board concluded that as the development did not solely relate to broadband that the Planning Authority’s Development Contribution scheme had been correctly applied in requiring the payment of a Section 48 Contribution for this development type.

7.21. Conclusion

7.21.1. Based on the above considerations I conclude that the Planning Authority has correctly applied its contribution scheme in this case and that the subject condition should remain as stated.

8.0 Appropriate Assessment

8.1. 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.

9.0 Recommendation

9.1. 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, 2019 to 2025, for the area had been properly applied in respect of condition number 1 for the reasons and considerations set out below. I therefore recommend that condition number 1 should remain as stated by the Planning Authority in their notification to grant retention permission.

10.0 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 considers that condition number 1 has been correctly applied and determined in accordance with Monaghan County Council General Development Contribution Scheme, 2019 – 2025.

11.0 Reasons and Considerations

Having regard to:

- (a) The submissions made in this appeal
- (b) The provisions of Monaghan County Council General Development Contribution Scheme, 2019 – 2025.
- (c) The planning history of the site.
- (d) All relevant planning provisions.

The Board considers that condition no. 1 has been correctly applied and determined in accordance with the provisions of the Monaghan County Council General Development Contribution Scheme, 2019 – 2025, and it considers that the this development for which retention is sought does not solely provide for

broadband and there is no exemption and/or waiver for this development type provided for under the said scheme.

Patricia-Marie Young
Planning Inspector

8th day of November, 2021.