



An
Bord
Pleanála

Inspector's Report ABP-311248-21

Development	Erection of a 27m high lattice telecommunications support structure together with antennas, dishes and associated equipment.
Location	Elvey, Emyvale, Co. Monaghan
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	21/276
Applicant(s)	Emerald Tower Ltd
Type of Application	Permission
Planning Authority Decision	Grant, subject to 5 conditions
Type of Appeal	Section 48(10)(b)
Appellant(s)	Emerald Tower Ltd
Observer(s)	None
Date of Site Inspection	n/a
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located in the townland of Elvey to the east of the N2 and 3.5km to the north of Emyvale.
- 1.2. The site lies on locally elevated farmland and it extends over an area of 0.0116 hectares.

2.0 Proposed Development

- 2.1. The proposal is for the erection of a 27m high lattice telecommunications support structure together with antennas, dishes and associated equipment.
- 2.2. The proposal would replace an adjacent existing 15m high monopole. (Another 8m high monopole nearby would remain). Eir's existing 3 antennas and 5 dishes would be relocated to the new support structure and 3 other operators with 3 antennas each would be able to locate on this support structure, i.e. a total of 9 new antennas.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted on 12th August 2021, subject to 5 conditions, including the following one, denoted as No. 1, which is the subject of this appeal.

The developer shall pay to Monaghan County Council a sum of €47,520 in accordance with the General Development Contribution Scheme 2013 – 2019 (as revised) made by the Council under Section 48 of the Planning and Development Act 2000 (as amended), towards expenditure incurred or proposed to be incurred by the Council in the provision of community, recreation and amenity public infrastructure and facilities in the area.

The sum attached to this condition shall be revised from the date of the grant of planning permission to the value pertaining at the time of payment in accordance with the Wholesale Price Index for Building and Construction (Materials and Wages).

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

The sum cited in Condition No. 1 was calculated on the basis of 9 antennas at €5280 each.

4.0 Planning History

- 18/355: Retention of 15m high support structure for telecommunications equipment (previously permitted under 12/049): Permitted.

5.0 Policy and Context

5.1. National Policy and Advice

- Telecommunications Antennae and Support Structures Guidelines 1996

Circular PL07/12 advises 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 2013

These Guidelines state that planning authorities are required to include waivers for broadband infrastructure (masts and antennae) in their development contribution schemes.

Circular PL03/2018 augments the above cited waivers by extending them to include mobile phone infrastructure. It states the following:

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.

5.2. Development Contribution Scheme

When the Planning Authority made its decision on the current planning application its Development Contribution Scheme 2013 – 2019 (DCS) as revised in May 2018 was still operative. (Since then it has adopted a new Development Contribution Scheme 2021 – 2026, which became effective on 6th September 2021). In Appendix 3, levels of general development contribution are set out. Under Category 3 and Development (n), Telecommunications Infrastructure, the amount of contribution cited is €10,420 per mast/installation and €5230 per antenna/dish installed on existing mast/installation. Under Section 19(e) the following exemption appears:

100% exemption from all development contribution charges in relation to telecommunications development which is solely for the provision of broadband infrastructure where the new development does not place a demand for new, upgraded or additional infrastructure or services.

6.0 The Appeal

6.1. Grounds of Appeal

Under Section 48(1)(b) of the Planning and Development Act, 2000 – 2021, the applicant has appealed the first condition of the Planning Authority's planning permission. The grounds of appeal cited are set out below:

(a) Inconsistent application of DCS by the Planning Authority

- It is unclear why the Planning Authority calculated the development contribution on the basis of 9 antenna and it is unclear why a per antenna as distinct from a per mast basis for calculation was used.
- Three examples of permitted applications in County Monaghan are cited in which the basis for calculation was per mast rather than per antenna/dish. These examples are summarised below:
 - 18/558: 39m high mast with 9 antennas and 6 dishes - €10,480 levied,

- 20/068: 36m high mast with 3 antennas and 2 dishes - €10,480 levied, and
- 21/028: 18m high mast with 6 antennas - €10,480 levied.

(b) Planning Authority's failure to revise its DCS in accordance with Circular PL03/18.

- Circular PL03/18 extends the waiver from being levied from broadband infrastructure to mobile infrastructure, too. (Some local authorities had already done this, and the Circular requires that this approach now be adopted consistently by all local authorities). Notwithstanding the mandatory nature of this Circular, the Planning Authority at the time of its decision on the current application had not revised its DCS to reflect this advice.
- The Planning Authority's DCS 2013 – 2019 provides a waiver for the provision of broadband infrastructure only. Its draft DCS 2021 – 2026 extends this waiver to mobile infrastructure and yet its calculation of the levy fails to reflect this. (This DCS also rounds up the rates for masts/installations from €10,420 to €10,510 and for antennas/dishes from €5230 to €5280).
- Mobile phones are invariably used for on-line purposes all of which requires mobile broadband connection. Comreg's Outdoor Coverage Map shows that the prospective operators of equipment on the proposed 39m lattice tower, Eir, Vodafone, and Three, all need to improve their coverage either in the immediate area of the site and/or in the wider area. The proposal would enable them to do so.
- Attention is drawn to the Board's decision on ABP-308859-20. In this case a levy of €10,000 was conditioned by the Planning Authority on a 21m high monopole. The need to waive this levy in its entirety was recommended by the case inspector, who cited as precedent Board decisions on ABP-300904-18 and ABP-300853-18 and the provisions of Circulars PL07/12 & PL03/18. The Board accepted this recommendation. The applicant states that this decision provides a precedent for the removal of Condition No. 1 in the current case.

6.2. Planning Authority Response

Appeals under Section 48(10)(b) of the Planning and Development Act, 2000 – 2021, are confined to considering whether the Planning Authority properly applied the terms of its DCS. Questions as to the merits of the DCS or the amounts of levies are not, therefore, open for consideration.

When the Planning Authority made its decision on the current case its DCS 2013 – 2019 was operative. Under Category 3(n), telecommunications developments were addressed for the purposes of levies.

(a) Under the applicant's first ground of appeal, it cites three examples where the Planning Authority levied the flat rate for a mast/installation. However, in each example a new mast was proposed rather than a replacement one, as in the current case. Accordingly, the Planning Authority did not apply this flat rate, but a multiplier of 9 to the antenna rate, thereby reflecting the new, as distinct from relocated equipment, which would be mounted on the replacement mast.

(b) Under the applicant's second ground of appeal, it contends that the Planning Authority failed to update its DCS to reflect Circular PL03/2018.

- Under Section 18 of the DCS 2013 – 2019, a waiver was granted solely for broadband infrastructure. Thus, telecommunication developments that were not solely for broadband infrastructure could continue to be levied.
- The applicant refers to Circular PL03/2018. However, it was issued in July 2018, whereas the last revision of DCS 2013 – 2019 was in May 2018. The latest DCS, for 2021 – 2026, was adopted on 6th September 2021. While it reflects Circular PL03/2018, its adoption came after the Planning Authority's decision on the current case on 18th August 2021.
- The current proposal is for voice and broadband connectivity and so as it is not solely for broadband connectivity the waiver under Category 3(n) was not applicable.
- Section 17 of the DCS 2013 – 2019 states that where a temporary permission, which bore a levy, is followed by a permanent one with no additional development, no further levy arises. However, any additional

development will attract a levy. (This Section has been carried forward into the new DCS).

- The applicant contends that the Planning Authority should have had regard to its draft DCS. However, insofar as that had yet to be adopted, it was the operative one only that could be applied.
- Notwithstanding the foregoing, Item 19(e) of the DCS 2021 – 2026 states that a waiver applies to mobile and broadband operators where they “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 and where the new development does not place a demand for new, upgraded or additional infrastructure or services.” The applicant has not demonstrated that its proposal would fulfil these conditions.
- Circular PL03/2018 states that a “waiver shall apply to any telecommunications infrastructure, both mobile and broadband, being deployed as part of a Government endorsed telecommunication strategy, plan, or initiative.” No information has been submitted in this respect.
- Circular PL03/2018 states that the operators must “demonstrate to the satisfaction of the planning authority that their infrastructure provides services to customers who would not otherwise be able to avail of an adequate mobile or broadband service.” While the applicant has shown that neither Eir nor Vodafone have adequate coverage in the area of the site, Three does have adequate coverage, and so this condition has not been fulfilled.
- In the case of ABP-308859-20, the Board’s decision to waive a levy took account of Kerry County Council’s DCS in which “Masts and antennae, dish and other apparatus/equipment for communication purposes which form part of the National Broadband Scheme (NBS) as defined by the Department of Communication, Energy and Natural resources (DCENR) shall receive a 100% reduction in development contributions.” The NBS is intended to intervene where the market will not provide any or sufficient coverage. By contrast, the site has had a mast on it since 1998 and the current proposal is

designed to facilitate multiple operators and so it would be a commercial development. In these circumstances, the waiver would be inappropriate.

- The Planning Authority draws attention to the following Board decisions in which its application of its DCS 2013 – 2019 was reviewed and confirmed in comparable circumstances to those currently pertaining: PL18.249028, ABP-303847-19, ABP-304681-19, and ABP-308443-20. Additionally, in the following Board decisions the condition at issue was confirmed, too, but with a minor reduction in the amounts to be levied, PL18.248750 and PL18.248753.

6.3. Further Responses

The applicant has responded to the Planning Authority's response as follows:

(a) Delay in the implementation of Circular PL03/2018

- Circular PL03/2018 was issued on 3rd July 2018 and yet its provisions were not reflected in a revised DCS for County Monaghan until 6th September 2021, i.e. a delay of over 3 years.
- This delay has denied telecommunications developers access to the provisions of Circular PL03/2018 in County Monaghan.
- It effectively contravenes the provisions of Sections 28 and 34(2)(a) of the Planning and Development Act, 2000 – 2021.

(b) Replacement mast versus new mast

- The categorisation of the proposal as a replacement mast is an unnecessarily complicated interpretation of a simple fact that the mast would be new in every respect. Accordingly, the levy should have been at least calculated on this basis, as was done in the examples cited in the applicant's grounds of appeal.

(c) Proposed antenna/dish numbers

- The Planning Authority's approach is flawed insofar as the 9 new antennas shown on the submitted plans may not all be installed. Thus, if one of the operators were not to take up its allocation, then only 6 antennas would be

installed, and yet under the Planning Authority's development contribution, 9 would have been levied.

(d) DCS 2021 – 2026

- The Planning Authority's position that the proposal would not qualify for exemption under Item 19(e) of its DCS 2021 – 2026 is contested for the following reasons:
 - The proposal would be "part of a Government endorsed telecommunications strategy, plan or initiative" as it would be part of the Government's telecommunications strategy as found in the National Development Plan 2021 – 2030, the National Planning Framework (Project Ireland 2040), and the Regional Spatial and Economic Strategies, and in framework documents such as "Our Rural Future – Rural Development Policy 2021 – 2025" and the recommendations of the Mobile Phone and Broadband Taskforce, which shaped Circular PL03/2018.
 - The proposal would "provide services to customers who would not otherwise be able to avail of an adequate mobile or broadband service". The Planning Authority rests its case on Three's 4G availability, which is either "very good" or "good" within maximum radii of 1km and 2km of the site, respectively, but after that tapers off. Accordingly, in overall terms, the coverage provided can only be described as "inadequate".
 - The proposal would not "place a demand for new, upgraded or additional infrastructure or services" in the form of road improvements of other local authority works.

Accordingly, in the light of the Board's decision on ABP-308859-20, a full waiver under Circular PL03/2018 is in order.

(e) ABP's decisions on previous challenges to the Planning Authority's DCS 2013 – 2019

- Some of the decisions cited by the Planning Authority were made within a short period following the issuing of Circular PL03/2018 and so its provisions could not have been expected to have been implemented. Nevertheless, the

over 3-year delay in such implementation that did arise has undoubtedly disadvantaged telecommunications developers in County Monaghan.

(f) ABP-308859-20

- While Kerry County Council's DCS clearly differs from the Planning Authority's one, the weight given by the Board to Circular PL07/12 and PL03/2018 is the significant factor.

7.0 Assessment

Introduction

7.1. The applicant has, under Section 48(b) of the Planning and Development Act, 2000 – 2021 (hereafter referred to as the Act), appealed Condition No. 1 attached to the Planning Authority's permission granted to application 21/276 on 12th August 2021. This Section pertains to a review of the appealed condition where an applicant considers that the terms of the relevant development contribution scheme (DCS) have not been properly applied. I will therefore review Condition No. 1 in the light of the operative DCS when the Planning Authority made its decision and other relevant considerations.

Relevant Governmental advice and the Planning Authority's DCSs

7.2. Relevant Governmental advice is found in the following Guidelines and Circulars:

- Telecommunications Antennae and Support Structures Guidelines 1996 and Circular PL07/12, and
- Development Contributions Guidelines 2013 and Circular PL03/2018.

7.3. Circular PL07/12, which was issued on 19th October 2012, advises 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.

7.4. Under Section 19(e), the Planning Authority's DCS 2013 – 2019, which was revised in May 2018, prompted by the above advice sets out the following exemption:

100% exemption from all development contribution charges in relation to telecommunications development which is solely for the provision of broadband

infrastructure where the new development does not place a demand for new, upgraded or additional infrastructure or services.

7.5. Circular PL03/2018, which was issued on 3rd July 2018, reports and advises that:

...action 3 of the Report of the Mobile Phone and Broadband Task Force – jointly chaired by the Minister for Communications, Climate Action and the Environment and the Minister for Regional and Community Development – recommended that the 2013 guidelines be now revised to ensure that such waivers are applied in Development Contribution Schemes in respect of both mobile phone and broadband infrastructure. In light of this, those local authorities who have not yet done so should now ensure that their Development Contribution Schemes are updated accordingly as soon as possible.

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.

7.6. Under Section 19(e), the Planning Authority's DCS 2021 – 2026, which was adopted on 6th September 2021, prompted by the above advice sets out the following exemption:

100% exemption from all development contribution charges in relation to 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 and where the new development does not place a demand for new, upgraded or additional infrastructure or services.

The proposal

7.7. Under the applicant's proposal, a 27m high lattice telecommunications support structure together would be erected with antennas, dishes and associated equipment. This proposal would replace an adjacent existing 15m high monopole.

Eir's existing 3 antennas and 5 dishes would be relocated to the new support structure and 3 other operators with 3 antennas each would be able to locate on this support structure, i.e. a total of 9 new antennas. It would be used to provide both broadband and mobile voice services to the area surrounding the site.

Application of DCS 2013 – 2019

- 7.8. The Planning Authority in assessing the proposal, under its DCS 2013 – 2019, took the view that it would entail a replacement rather than a new mast and so the new, as distinct from relocated, equipment that would be attached to it should be levied, i.e. the 9 new antennas. In Appendix 3 to the DCS 2013 - 2019, levels of general development contribution are set out. Under Category 3 and Development (n) Telecommunications Infrastructure, the amount of contribution cited is €10,420 per mast/installation and €5230 per antenna/dish installed on existing mast/installation. The Planning Authority, therefore, selected the €5230 and multiplied this figure by 9 to arrive at a levy of €47,520.
- 7.9. The applicant critiques the categorisation of the proposed mast as a replacement one and so it critiques the selection of the per antenna/dish rather than the per mast/installation as the basis upon which the levy should be calculated.
- 7.10. When the Planning Authority made its decision the operative DCS was the one for 2013 – 2019, as the one for 2021 – 2026 had yet to be adopted. Section 19(e) of this DCS provides a 100% exemption or waiver from levies for telecommunications development where two conditions are fulfilled. Firstly, such development is “solely for the provision of broadband infrastructure” and, secondly, it “does not place a demand for new, upgraded or additional infrastructure or services”. I consider that, as the proposal would provide both broadband and mobile voice services to the area surrounding the site, it would fail to fulfil the first of these conditions. I consider, too, that, as it would be developed on an existing serviced site, it would fulfil the second of these conditions. Accordingly, the 100% exemption is not applicable.
- 7.11. Category 3(n) refers to two scenarios that are termed “mast/installation” and “antenna/dish installed on existing mast/installation”. The Planning Authority has taken the view that the proposal would entail a replacement mast, which it then regards as an “existing mast” for the purposes of levying the 9 new antennas. The applicant insists that this categorisation is mistaken as the mast would be wholly

new. I consider that the mast would be a replacement one, but that it would be a new one, too, i.e. whatever else it is it cannot be categorised as an “existing mast”.

Category 3(n) does not distinguish between new masts, i.e. it does not distinguish between replacement masts and masts on sites that have not previously had masts upon them. I, therefore, take the view that the Planning Authority was mistaken in selecting the per antenna/dish rather than the per mast/installation as the basis upon which the levy should be calculated. Consequently, if the Board is minded to confirm the attachment of Condition No. 1, the levy should be €5230 rather than €47,520.

Application of PL03/2018

7.12. The applicant draws attention to the provisions of Circular PL03/2018 and to the failure of the Planning Authority to incorporate these provisions in its DCS in a timely manner. In practise, over 3 years elapsed before this was done, under DCS 2021 – 2026, which became operative after the decision on the applicant’s proposal on 12th August 2021. The applicant contends that the Planning Authority should have taken into account Circular PL03/2018 and its draft replacement DCS at the time of its decision on the proposal. The Planning Authority has responded by stating that there was no legal basis for it to do so in advance of the members adoption of DCS 2021 – 2026 on 6th September 2021.

7.13. I acknowledge the applicant’s sense of grievance and I recognise that ordinarily the Planning Authority’s above commentary would be valid. However, critically, Circular PL03/2018’s provisions have, under Section 28(1C) of the Act, the status of a Specific Planning Policy Requirement and so it is mandatory that planning authorities incorporate these provisions in their DCSs. Where this has yet to be done, the Board has previously taken the view that the provisions of PL03/2018 should apply, i.e. they should take precedence over an outdated DCS, e.g. ABP-308859-21. I, therefore, take the view that the current proposal falls to be reviewed under the PL03/2018 for the purposes of assessment for levies. It states that the waiver from levies on telecommunications developments is subject to the following two conditions:

- *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.

7.14. The first condition is the subject of disagreement between the parties. The Planning Authority considers that it is a reference to the Government's National Broadband Scheme (NBS), whereby it is effectively intervening to ensure that broadband services are available in localities where it would be unprofitable for commercial operators to provide such services. The site is near to the N2, and it has had telecommunications development upon it since 1998. The current proposal envisages 3 operators, Eir, Vodafone, and Three, installing equipment on the mast. Existing and proposed development would thus be commercial and so not part of the NBS. The applicant has responded by effectively stating that the Planning Authority has interpreted this condition too narrowly. Instead, it points to telecommunications strategies in national and regional plans and other framework and advisory reports that its proposal would further.

7.15. I note that Circular PL03/2018 specifically cites the NBS as being an outdated reference that needs to be edited out of emerging DCSs. I note, too, that this Scheme has been replaced by the National Broadband Plan, which appears to have a wider scope than its predecessor. Thus, it is described as follows on the Department of Environment, Climate and Communications website:

The National Broadband Plan is a framework for the delivery of high speed broadband services through commercial and state investment.

The plan follows previous initiatives such as the National Broadband Scheme, which provided basic broadband services in areas that could not be commercially served, and the Metropolitan Area Networks, which provides fibre based connectivity to over 90 towns across Ireland.

High speed broadband is being delivered through a combination of:

- *Commercial investment by the telecommunications sector, and*

- *A state intervention in those areas where commercial providers acting alone will not provide this service.*

In the light of this description, I consider that the applicant can reasonably claim that its proposal would come within the scope of this Plan and so the first condition would be fulfilled.

- 7.16. The second condition is the subject of disagreement between the parties. The Planning Authority draws attention to the “very good” and “good” levels of coverage that Three’s existing 4G services enjoy within 1 and 2kms of the site. It thus contends that customers of Eir and Vodafone could by moving to Three avail of these services. The applicant has responded by pointing out that this existing coverage tapers off beyond a radius of 2km and so any overall assessment of coverage would be that it is inadequate.
- 7.17. In the applicant’s cover letter to its application the Comreg Outdoor Mobile Coverage Map is referred to and the fact that Three’s 4G services are not consistently “very good” or “good” within 1 and 2km radii of the site, e.g. to the north-east and to the south-west, where these levels of coverage begin to taper within c. 1km. I, therefore, consider that the proposal would not duplicate existing service levels consistently and so it would comply with the second condition.
- 7.18. In the light of the above assessment, I conclude that under the mandatory provisions of Circular PL03/2018, the current proposal would attract no levy and so Condition No. 1 should be omitted from the Planning Authority’s permission granted to application 21/276.

8.0 Recommendation

That the Planning Authority be directed to remove Condition No. 1 from the permission granted to application 21/276.

9.0 Reasons and Considerations

Having regard to:

- (a) The provisions of the Development Contribution Scheme 2013 – 2019 operative when the Planning Authority attached Condition No. 1 to the grant of permission to application 21/276,
- (b) The mandatory provisions of Circular PL03/2018, under Section 28(1C) of the Planning and Development Act, 2000 – 2021, which are applicable to the telecommunications development proposed under application 21/276, and
- (c) The fulfilment of the conditions for a waiver of the normal development contribution set out in these mandatory provisions by the proposed telecommunications development,

It is considered that the Planning Authority, in attaching Condition No. 1, failed to properly apply its Development Contribution Scheme in the light of the mandatory provisions of Circular PL03/2018 and so this Condition for payment of a development contribution should be removed.

Hugh D. Morrison
Planning Inspector

9th February 2022