



An
Bord
Pleanála

Inspector's Report

ABP-311369-21

Development	Replacement of an existing telecommunications support structure with a proposed new lattice tower.
Location	Eir, Ballymorris Road, Portarlington Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	20443
Applicants	Vodafone Ireland Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party
Appellants	Vodafone Ireland Ltd
Date of Site Inspection	None required
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located in the town of Portarlington, Co Laois. There are residential properties to the east of the site, to the south is a garage, undeveloped lands form the western boundary.
- 1.1.2. There is an existing telecommunications exchange on the site.
- 1.1.3. The site is given as 0.00759ha.

2.0 Proposed Development

- 2.1.1. The proposed development is the replacement of an existing 15m high telecommunications support structure (overall height 16.7m) with a proposed new 24m high lattice tower (overall height 25.5m), carrying the telecommunications equipment transferred from the existing structure, and the addition of new telecommunications antennas, dishes and associated equipment, together with new ground level equipment cabinets.

Coverage

- 2.1.2. Maps of existing coverage are shown in section 3 of the application submission.
- 2.1.3. Eir Mobile existing 4G coverage is stated as good, and to the west, which the structure would provide coverage to, is rated as fair. The proposed infrastructure will provide capacity for Eir Mobile to install equipment and improve their coverage in these areas.
- 2.1.4. Three Ireland existing 4G coverage is stated as good but with large areas classified as fringe coverage. The proposed infrastructure will provide capacity for Three to install equipment and significantly improve their coverage in the area.
- 2.1.5. Vodafone 4G coverage is stated as very good. The proposed infrastructure will provide capacity for Vodafone to install equipment and further improve coverage in the area.
- 2.1.6. The proposed replacement installation will provide improved service and capacity in surrounding area. The existing structure height is insufficient to support multi-operator solutions in providing service in the area.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission with 8 conditions, including condition no. 8

Prior to the commencement of development, a contribution shall be payable to Laois County Council in accordance with the Council's Development Contribution Scheme 2017-2023, in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided or that is intended to be provided by or on behalf of the Council.

The contribution payable will be based on the contribution rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction) and penalty interest for late payment, in accordance with the Council's Development Contribution Scheme.

Development not in any of the above classes

Industrial Development	€40 per sq m	Area	Total per Contribution
Total Development Contributions	€40	73m ²	€2,920

Reason: It is considered appropriate that the developer should contribute towards the expenditure incurred or proposed to be incurred by Laois County Council in respect of the provision / improvement of public services/infrastructure benefiting development, in the area of the planning authority.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

The first planning report dated the 13th October 2020, was followed by a request for further information on 4 points: landscape and visual assessment, restoration plans, inaccuracy in drawings, and coverage.

The second planning report dated the 20th April 2021, was followed by a request for clarification of further information on 2 points: landscape and visual assessment and coverage.

The third planning report dated the 9th August 2021, recommended permission.

3.3. Third Party Observations

None.

4.0 Planning History

05/804 – construct convenience store and remove existing front boundary wall.

05/386 – install 3 underground fuel storage tanks, concrete aprons & ancillary drainage works,

04/1186 – construct convenience store & remove existing front boundary wall.

00/634 – install three underground fuel storage tanks, concrete aprons and ancillary drainage works,

00/630 – construct a fuel loading gantry and associated site works.

99/859 – erect convenience store, and permission to remove existing front boundary wall.

5.0 Policy Context

5.1. Development Plan

5.2. Laois County Council Development 2017-2023.

5.2.1. This is the operative plan for the area. Relevant provisions include:

Aim 12 Support the development of key infrastructure such as telecommunications, electricity, gas to enable economic development.

6.6.5 Telecommunications - the development of high-quality telecommunications infrastructure is critical to advance the economic and social development of the county. The development of telecommunications infrastructure is essential to attracting investment and facilitating economic development. The Council is committed to enhancing the telecommunications network and infrastructure throughout the county. However, this must be managed to ensure a balance between the provision of telecommunications infrastructure in the interests of social and economic progress, and sustaining residential amenity and environmental quality.

6.6.5.1 Broadband - the availability of a high-quality and high speed broadband network will, increase economic development potential by facilitating a transition to a knowledge-based 'smart economy', it promotes sustainable development by encouraging remote working and reducing commuting and it can promote social inclusion and an enhanced quality of life for all. National Broadband Scheme Government policy is focused on ensuring that everyone, irrespective of where they live, should have access to high quality, competitively priced broadband services. The rollout of the National Broadband Scheme is focused on delivering basic, affordable broadband to target areas across the country in which services were deemed to be insufficient.

Rural Broadband Scheme - the Rural Broadband Scheme has been established to enable a basic broadband service to be provided to individual rural premises which are not capable of obtaining a broadband service from existing internet service providers. The scheme included extensive parts of the county.

6.6.5.2 Telecommunications Masts and Antennae - an efficient telecommunications system is important in the development of the economy of which the provision of masts and associated antennae are an essential element. The Council will have regard to the document titled Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (DoELG, 1996) when considering applications for masts and antennae. The location of masts can be a contentious issue and one which will be carefully considered by the Planning Authority. In general: it shall be the preferred approach that all new support structures meet fully the co-location or clustering policy of the guidelines and that shared use of existing structures will be required where there are a number of masts located in any single area.

It is the policy of the Council to:

- facilitate the delivery of high-capacity telecommunications infrastructure at appropriate locations throughout the county having regard to the guidelines for “Telecommunications Antennae and Support Structures” and any updated documents issued by the DoECLG or relevant authority (TELE5);
- co-operate with telecommunications service providers in the development of infrastructure, having regard to the proper planning and sustainable development of the area, normal planning and environmental criteria and the development management standards (TELE7);
- developers may be required to provide telecommunications structures with environmentally acceptable designs, including camouflaging/disguising techniques to integrate the structure into the surrounding landscape (TELE8);
- adopt a presumption against the location of structures in vulnerable landscapes as identified in the Landscape Character Assessment (Appendix 6) and in areas where views are to be preserved and in areas adjacent to national monuments, sites of archaeological heritage or protected structures (TELE 9);
- existing Public Rights of Way will be identified prior to any new telecommunication developments (including associated processes) which will be prohibited if they impinge thereon or on recreational amenities, public access to the countryside, communities or the natural and built environment (TELE10);
- promote and facilitate the sharing of facilities (TELE 11). Co-location and clustering of new masts and support structures on existing sites will normally be required, unless a fully documented case is submitted explaining the precise circumstances which mitigate against co-location and clustering. Where it is not possible to share a support structure, the applicant should, where possible, share the site or an adjacent site so that the antennae may be clustered. In sensitive landscape areas the presumption will be that applications must meet the co-location requirements. Where it has been proven that there is a need for new / expanded coverage in a particular area, the applicant shall show that all existing masts and support structures have been examined to determine if the attachment of new antennae to existing structures can provide the coverage required, the applicant shall submit either a Discovery Series Map or similar map type (to be agreed with

planning authority) to the scale of 1:50,000 the location of all telecommunication structures within a radius of 1km of the proposed site, indicating the coverage area of the proposed facility and a technical evaluation of the capabilities of these masts to take additional antennae and provide the coverage required.

- applicants shall indicate whether or not they are willing to share the proposed masts with other telecommunication operators. Comply with the Code of Practice of Sharing Radio Sites issued by the Commission for Communication Regulation; Demonstrate compliance with the requirements of the DOECLG Guidelines on “Telecommunications Antennae and Support Structures (1996) “and the Circular Letter of 2012(PL07/12) (as may be amended) and other publications and material as may be relevant (TELE 12);

Development Management Standards in relation to telecommunications are set out in DM67 and include: justification of need, evidence of consultations, if any, with other operators with regard to the sharing of sites and/or support structures, and a requirement for a statement of compliance with the International Radiation Protection Association (IRPA) Guidelines.

‘Telecommunications support structures’ are not listed in land use matrix.

5.3. **Portarlington Joint Local Area Plan 2018-2024**

The site is within the town of Portarlington where the joint local area plan (Laois and Offaly) applies. Relevant provisions include:

Zoned Industrial & Warehousing (Industry – in Offaly OCC) - utility structures are permissible,

Objective: To provide for and improve industrial and warehousing development.

Purpose: To provide for industrial development, including heavy industry with environmental emissions, including noise and odour and with intensive or hazardous processing. To also provide for light industry, technology related office development and general office development that exceed 400 square metres. Other uses, ancillary or similar to industry and warehousing will be considered on the merits of each planning application and may be acceptable...

Objective:

KI O12: Facilitate, promote and encourage the expansion and improvement of telecommunications, broadband, electricity and gas networks infrastructure.

Policy:

KI P10: Co-operate with and facilitate the work of national telecommunications, broadband, electricity and gas network providers in the improvement, expansion and provision of energy, renewable energy and communication infrastructure subject to proper planning and sustainable development.

Opportunity site 2 adjoins the subject site; identified as suitable for mixed use.

5.4. Laois County Council Development Contribution Scheme 2017-2023

Section 12. - The section 'exemptions' includes:

12.9. Telecommunications Development consisting of masts and antennae, dish and other apparatus/equipment for communication purposes which form part of the National Broadband Scheme (NBS) or a subsequent Government endorsed initiative as defined by the Department of Communication, Energy and Natural Resources (DCENR]. Where a general development contribution has been paid for telecommunications apparatus on foot of a 5 year permission (as recommended by the DoEHLG Guidelines on Telecommunications 1996), contributions will not be payable on any subsequent applications for the same structure, unless the existing structure is to be materially altered.

Section 16. - Development Contributions Scheme 2017-2023 - sets out the rates of contribution payable as:

Development not in any of the above classes €40* per sq. m.

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

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

5.6. **Development Contributions Guidelines for Planning Authorities (2013)**

5.6.1. Planning authorities are required 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.

5.6.2. **Circular PL07/12**

5.6.3. Issued prior to the publication of the Development Contribution Guidelines, from the Minister for the Environment, Community and Local Government to update certain sections of the Telecommunications Antennae and Support Structures Guidelines (1996), it includes 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.

5.6.4. **Circular PL03/2018**

Revision of Development Contribution Guidelines in respect of Telecommunications Infrastructure (3rd July 2018). Reference to previous Circulars 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). While 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.

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.

To ensure that a consistent approach is applied by all local authorities in this regard, 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 were asked to ensure that their Development Contribution Schemes are updated accordingly as soon as possible.

5.7. Natural Heritage Designations

- 5.7.1. The nearest protected site is the River Barrow and River Nore SAC (site code 002162) located c250m to the west.

5.8. EIA Screening

- 5.8.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal against condition no. 8 of the decision, has been made by Towercom. It includes:

The contribution has been erroneously applied given:

- The proposed telecommunications infrastructure includes the provision of both mobile phone services and wireless broadband services and potentially the services of smaller broadband operators as indicated in the documentation submitted with the planning application.
- In line with Circular PL03/2018 and to ensure a consistent approach is applied the Laois Development Contribution Scheme should apply waivers in respect of both mobile phone and broadband infrastructure.
- Circular PL03/2018 requires waivers for broadband be extended to include mobile phone infrastructure – *‘While this waiver was primarily targeted at broadband infrastructure to facilitate the roll-out of broadband nationally, most local authorities have since unilaterally extended the scope of the waiver under their Development Contribution Schemes to include mobile phone infrastructure for the purpose of assisting in improving mobile phone coverage in their areas, including in rural areas.’*
- Use as a multi-operator support structure The proposed replacement structure would make the site available to other telecommunications and broadband operators in line with local and national policy. Towercom manages an existing mast network in Ireland and facilitates the co-location of multi-operator infrastructure to a wide range of clients including national mobile operators, national and local broadband providers, national broadcasters and national and local emergency services for both the public and private sector. The proposed development will enhance and improve telecommunications and broadband services in the region in accordance with local and national policies.
- Precedent is cited where a financial contribution was not applied – Laois - 19/413, 19/618, 20/121; ABP - PL08.308859 (and others referred to in that case).

7.0 Assessment

- 7.1.1. 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 8 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.

- 7.1.2. Condition no 8 requires the payment of €2,920, in accordance with the Council's Development Contribution Scheme 2017-2023, in respect of public infrastructure and facilities, based on section 16 of the Laois County Council Development Contribution Scheme 2017-2023, class of contribution 'development not in any of the above classes' and appears to be based on the site area; although the site area is given as 75.9 sq m rather than 73 sq m to which the contribution would equate.
- 7.1.3. Section 12 'exemptions' provides that where a general development contribution has been paid for telecommunications apparatus on foot of a 5 year permission (as recommended by the DoEHLG Guidelines on Telecommunications 1996), contributions will not be payable on any subsequent applications for the same structure, unless the existing structure is to be materially altered.
- 7.1.4. The development contribution scheme, adopted in 2017, has not been amended to reflect the terms and conditions of Circular PL03/2018, issued in July 2018.
- 7.1.5. Use as a multi-operator support structure – the application and appeal state that the 25m lattice structure would make the site available to other telecommunications and broadband operators in line with local and national policy; Towercom manages an existing mast network in Ireland and facilitates the co-location of multi-operator infrastructure to a wide range of clients including national mobile operators, national and local broadband providers, national broadcasters and national and local emergency services for both the public and private sector; the proposed development will enhance and improve telecommunications and broadband services in the region in accordance with local and national policies. In response to the request for further information on this issue, the applicant states that the main benefits of increasing the lattice tower to 24m is an improvement in the 'good' coverage in Portarlinton; there is also an increase in coverage in the surrounding towns and villages such as Mountmellick, Rathangan and Clonbulloge; and also

significant improvement in coverage in rural areas to the west and east of the site. Other operators may review sites within c1000m range if capacity is limited by the structures in place. A map showing the coverage area is provided, (p3 of the submission). It is not envisaged that any exiting similar facilities within the coverage area will be removed. Given the increased customer demand for communications networks operators, such as Vodafone are constantly upgrading and modifying their networks to keep pace with demand. The proposed lattice structure would be of use to potentially multiple operators in improving mobile and data services in the area as well as smaller broadband operators.

7.1.6. 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 circular stipulated that where such infrastructure provides services to customers who would not otherwise be able to avail of an adequate mobile or broadband service, it should not attract development contributions.

7.1.7. I am satisfied that the infrastructure that is to be provided would satisfy these requirements and can be considered to be in accordance with the Government's National Broadband Plan and therefore should not attract a development contribution charge.

8.0 Recommendation

8.1. 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 8 and the reason therefor for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the:

- a) Laois County Council Development Contribution Scheme 2017 – 2023, which includes a reduction of 100% for ‘Telecommunications Development consisting of masts and antennae, dish and other apparatus/equipment for communication purposes which form part of the National Broadband Scheme (NBS) or a subsequent Government endorsed initiative 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 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 payment of the contribution should therefore not be required.

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.

Planning Inspector

14th March 2022

Appendices:

Appendix 1 Laois County Development Plan 2017-2023, extracts.

Appendix 2 Laois County Council Development Contribution Scheme 2017-2023