



An
Bord
Pleanála

Inspector's Report

ABP-314316-22

Development	Construction of a 30 metre high free standing communications structure
Location	Curraghmore Estate, Curraghmore Td., Portlaw, Co. Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	22204
Applicant(s)	Eircom Limited.
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	First Party.
Appellant(s)	Eircom Limited.
Observer(s)	None.
Date of Site Inspection	None.
Inspector	Stephen Rhys Thomas

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	4
3.4. Third Party Observations	4
4.0 Planning History.....	4
5.0 Policy Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations	6
5.3. EIA Screening	7
6.0 The Appeal	7
6.1. Grounds of Appeal	7
6.2. Planning Authority Response	7
6.3. Observations	7
6.4. Further Responses.....	8
7.0 Assessment.....	9
8.0 Recommendation.....	11
9.0 Reasons and Considerations.....	11

1.0 Site Location and Description

1.1. The site is located along a minor country road that borders the Curraghmore Estate, north west of Portlaw in County Waterford. The site is situated in woodland along the southern side of the road on an escarpment overlooking the valley below.

2.0 Proposed Development

2.1. Permission was sought for:

- Construction of a 30 metre high free standing communications structure, together with associated exchange cabinets, fencing, access gate, upgrading of existing access track and all associated site development works.
- Further Information was submitted in relation to alternative locations analysis, revised design and a record of existing tree cover in the area. A revised support structure design was proposed and accepted by the planning authority, to omit the 30 metre lattice tower and replace with a 24 metre monopole structure, all other aspects remain the same as before.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to grant permission subject to seven conditions, the relevant condition can be summarised as follows:

7. The developer shall pay a financial contribution of €10,000, in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000 (as amended). The scheme was adopted on 12 February 2015, as follows:

Surface Water	€1,500
Recreation and Amenity	€ 500
Community Facilities	€4,000
Transport	€4,000

Total	€10,000
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3.2. **Planning Authority Reports**

3.2.1. Planning Reports

Report 1

- Co-location opportunities have been submitted but no maps.
- Visual impacts not fully assessed.
- Further information requested in accordance with the Planner's report.

Report 2

- The sensitivities of the landscape and built heritage in the area is noted as too are the concerns of the Conservation Officer. The structure should have an appropriate camouflage treatment applied. Subject to conditions, the development should be permitted.

3.2.2. Other Technical Reports

Conservation Officer – refusal recommended (as noted by the Planner's report).

3.3. **Prescribed Bodies**

Development Applications Unit (DHLGH) – an Archaeological Impact Assessment should be submitted as further information.

3.4. **Third Party Observations**

A single submission was received by the planning authority that raised concerns about visual impact, refusals of similar development in the wider area and health concerns.

4.0 **Planning History**

4.1. Subject Site:

None.

5.0 Policy Context

5.1. Development Plan

Waterford City and County Council Development Plan 2022-2028

Utility, Energy & Communication Policy Objectives

UTL 16 - ICT/ Communications

Landscape Policy Objectives

L 03 - Landscape and Seascape Character Assessment

Development Management DM 30

In evaluating applications for telecommunications installations, the Council will have regard to “Telecommunications Antennae & Support Structures Guidelines for Planning Authorities” (1996), and Department Circular PSSP 07/12. Co-location of such facilities on the same mast or cabinets by different operators is favoured to discourage a proliferation, and co-location agreements to be provided where possible. Where new facilities are proposed applicants will be required to satisfy the Council that they have made a reasonable effort to share facilities or to locate facilities in clusters.

Waterford City and County Council Development Contributions Scheme 2015-2021

Table - *Other Non-Residential Development* - Telecommunication masts €10,000

Section 7. EXEMPTIONS

Exemptions and reduced rates in the current schemes were reviewed and a number of additional exemptions and reductions are proposed having regard to the need to stimulate economic activity and also the Development Contribution Guidelines issued by the Department of the Environment, Community and Local Government.

Non-Residential Exemptions (also refer to General Exemptions), include:

Page 7, paragraph 9) Broadband infrastructure (i.e. masts, dishes and antennae).

Waterford City & County Development Contribution Scheme 2023-2029

The Waterford City and County Council Development Contribution Scheme 2023-2029 was formally adopted by the Elected Members of Waterford City and County Council at its Plenary Meeting on the 9th of February 2023.

Section 8. EXEMPTIONS

Exemptions and reduced rates in the current schemes were reviewed and a number of additional exemptions and reductions are proposed having regard to the need to stimulate economic activity and also the Development Contribution Guidelines issued by the Department of the Environment, Community and Local Government.

Page 9 – Paragraph 9) TV, Radio, Mobile and Broadband infrastructure (i.e. masts, dishes and antennae).

Circular PL03/2018 Revision of Development Contribution Guidelines

This circular letter, PL03/2018 was published by the Department of Housing Planning and Local Government on the 3rd day of July 2018 and sets out that waivers for broadband infrastructure shall be extended to include mobile phone infrastructure. The following is specifically set out “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 equivalent being installed for such communications purposes”.

5.2. Natural Heritage Designations

- 5.2.1. The subject site is located approximately 500 metres north of the Lower River Suir SAC (site code 002137). Having regard to the scale and nature of the proposed rural telecoms development and to the location removed from any European Sites no Appropriate Assessment issues arise. The proposed development would not be

likely to have a significant effect individually or in combination with other plans or projects on a European site.

5.3. EIA Screening

- 5.3.1. Having regard to the nature of the proposed rural telecoms development and its location removed from any sensitive locations or features, there is no real likelihood of significant adverse effects on the environment. 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 applicant has appealed against condition 7 of the notification to grant permission issued by the planning authority, the grounds of appeal can be summarised as follows:

- Circular PL07/12 recommends that levies for broadband infrastructure is waived. Sections of the circular are reproduced to support the argument.
- Waterford City and County Council Development Contributions Scheme 2015-2021, on page 7 lists out exemptions for Broadband infrastructure.
- The development will support the National Broadband Plan.

6.2. Planning Authority Response

In accordance with section 6(b) of the Development Contribution Scheme, the charge of €10,000 was applied.

6.3. Observations

None.

6.4. Further Responses

The applicant reiterates their grounds of appeal in response to the planning authority's observation.

7.0 Assessment

7.1. Introduction

- 7.1.1. This is a first party appeal solely against a development contribution condition (condition 7) attached to the decision by Waterford City and County Council to grant permission for the proposed development and no other appeals have been lodged.
- 7.1.2. 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. In this instance, the Board, may restrict their considerations to the merits of condition number seven only.
- 7.1.3. In my assessment of the appeal, I refer to the Waterford City & County Development Contribution Scheme, as the 'scheme'. I note that the scheme has recently been reviewed and the Waterford City & County Development Contribution Scheme 2023-2029 came into force in February 2023. In both schemes, old and new, exemptions are set out with regard to TV, Radio, Mobile and Broadband infrastructure (i.e. masts, dishes and antennae). Specifically, I note that the 2015 scheme indicated a €10,000 charge for telecoms infrastructure, but also exempts the same infrastructure in the list of exemptions. The current scheme does not list telecoms infrastructure as liable for any charge but lists it amongst other non residential exemptions. In any case, I have applied the requirements of the 2023 scheme in my assessment of this appeal.

7.2. Development Contribution (Condition 7)

- 7.2.1. The current proposal refers to the construction of a 24 metre monopole telecommunications support structure as amended by further information drawings WD—2376-02-P08 to P11, antennae, dishes and support equipment within a security fencing and associated equipment. The applicant is satisfied with the permission that issued and it is only condition 7 that references a charge that is appealed.
- 7.2.2. In both schemes (2015 and 2023) there are certain exemptions and reductions from the charge. The Planning Authority has set out the following in relation to telecommunications infrastructure in both schemes, as follows: exemptions and

reduced rates in the current schemes were reviewed and a number of additional exemptions and reductions are proposed having regard to the need to stimulate economic activity and also the Development Contribution Guidelines issued by the Department of the Environment, Community and Local Government. - TV, Radio, Mobile and Broadband infrastructure (i.e. masts, dishes and antennae). The wording is the same for both schemes old and new.

- 7.2.3. I note the claim by the applicant that the 2015 scheme has not been updated to incorporate the provisions of Planning Circular PL03/2018 in relation to waivers for the development of telecommunications infrastructure including masts, antennae and dishes. I am satisfied that this circular provides for waivers in respect of development of mobile phone infrastructure, including broadband services. Such waivers or exemptions are allowed for in the exemptions section of both schemes. However, I note that the 2015 scheme sets out a €10,000 charge for telecoms infrastructure and it is this that the planning authority have referred to, but in the same document such infrastructure is exempt, page 7 of the 2015 scheme refers.
- 7.2.4. I am satisfied based on the planning documentation submitted, that the proposals would provide for a more robust and functional structure and would provide for improved wireless broadband services within the area of Portlaw. To support the roll out of 3G and 4G services in the area, Portlaw and the Curraghmore Estate would benefit from the infrastructure proposed. The proposals will also enable other telecommunications providers to co-locate on the telecommunications structure, as permitted, condition 4 refers.
- 7.2.5. It is apparent from Circular letter PL03/2018, that the waiver from development contributions “applies to masts, antennae, dishes and other apparatus or equipment being installed for such communications purposes”. This Circular letter, published in July 2018 postdates the previous 2015 scheme, but has been incorporated into the 2023 scheme. The Circular letter sets out that “local authorities are accordingly requested to update relevant references in their Development Contribution Schemes at the next available opportunity”, this has been done for the current scheme.
- 7.2.6. I am satisfied that taking account of the provisions of the Circular letter PL03/2018, the provisions of the exemptions provided for telecommunications infrastructure on page 7 of the 2015 scheme and equally page 9 of the 2023 scheme, that the

provision of new telecommunications infrastructure on site, including the installation of a 24 metre monopole support structure, would entitle the applicant to avail of the exemption. This would be the case in the previous scheme and the current scheme, because the same exemptions apply.

- 7.2.7. The applicants are entitled to seek the exemption, as provided for within the scheme. I consider that the levy as proposed, is not warranted or justified and should be removed. The terms of the Waterford City and County Council Development Scheme or the provisions of Planning Circular PL03/2018 have not been properly applied in this case, and the appeal should be upheld and condition 7 omitted.

7.3. Other Matters

- 7.3.1. I note that a submission was made regarding the planning application by the Development Applications Unit (DAU) of the Department of Housing, Local Government and Heritage concerning the potential for archaeological remains on the site. The planning authority did not attach a standard archaeological monitoring condition, but it would be reasonable given the sensitivities of the wider area and the extent of trackway to be constructed. However, the attachment of a condition regarding archaeological monitoring could be considered as a new issue and for that reason alone I do not recommend it.

8.0 Recommendation

- 8.1. It is recommended that the Planning Authority be directed to remove condition number 7, for the reasons and considerations hereunder.

9.0 Reasons and Considerations

Having regard to

- (a) the general arrangements regarding payment of development contributions and implementation of the scheme,
- (b) the extent of proposed telecommunications developments on the site,
- (c) the exemption provisions on page 9 of the Waterford City and County Council Development Scheme 2023-2029, and

(d) The provisions of Planning Circular letter PL03/2018 Issued by the Department of Housing, Planning and Local Government in relation to waivers for the development of masts, antennae, dishes and other apparatus or equipment being installed for such communications purposes

It is considered that the financial contribution as set out under Condition 7 of planning reference number 22204, is not justified. Therefore, it is considered that the provisions of the adopted development contributions scheme nor that of Planning circular letter PL03/2018 have been properly applied such that Condition Number 7, attached to Planning Reference number 22204 should be removed.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Stephen Rhys Thomas
Senior Planning Inspector

24 July 2023