



An
Bord
Pleanála

Inspector's Report

ABP-315366-22

Development	Replacing 2 telecommunication structures with a single 18m multi-operator monopole structure, together with associated site works.
Location	Drumlara, Tedavnet, Co. Monaghan
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	22374
Applicant(s)	On Tower Ireland Limited.
Type of Application	Permission.
Planning Authority Decision	
Type of Appeal	First party against conditions
Observer(s)	None.
Date of Site Inspection	2 nd May 2023.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.003ha and is located in the townland of Drumlara, south-east of Tedavnet in north County Monaghan. It comprises a small telecommunications compound within a larger agricultural field that currently hosts 2 No. telecommunications structures.
- 1.2. The compound is located at the ridgeline and is adjacent to the eastern site boundary.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises replacement of 2 No. existing telecommunications support structures with a single 18m multi-operator monopole telecommunications structure, together with associated development including 2.4m palisade fence enclosed compound.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 22nd November 2022, subject to 6 No. conditions.

Condition 1(a) required payment of a financial contribution of €21,600 under the S48 development contribution scheme.

Condition 1(b) provided for revision of the sum payable, at the time of payment, in accordance with the Wholesale Price Index for Building and Construction.

Condition 1(c) required that no works shall commence until payment of the contribution is made or agreement has been made in relation to phased payment.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 20th October 2022 and 17th November 2022 have been provided, which together reflect the decision to grant permission. The first report requests additional information regarding the number of antennae/dishes currently

on the structures and the number proposed to be installed on the replacement structure. The second report followed receipt of the AI response. It summarises and responds to the AI response and recommends that permission be granted, subject to 6 No. recommended conditions, including a condition requiring payment of a financial contribution of €21,600 under the S48 development contribution scheme.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

- 3.3.1. The Planning Authority report indicates that the Department of Defence was consulted on the application but did not make a submission.

3.4. Third Party Observations

- 3.4.1. None.

4.0 Planning History

10/284: Permission granted on 28th September 2010 for retention of 12m telecommunications monopole structure carrying antennas and link dishes together with associated equipment container, security fence and access track.

00/524: (ABP Ref. PL18.122369) The Board granted permission on 22nd August 2001 for a 10m antenna support structure, carrying cellular antennae, radio links, fencing, access, etc. Permission was granted for a temporary period of 5 years.

5.0 Policy Context

5.1. Monaghan County Development Plan 2019-2025

- 5.1.1. Section 7.20 relates to Telecommunications. It acknowledges the importance of a high-quality and sustainable telecommunications network to the economy and quality of life of the County. Relevant policies include: -

TCP 1: To support the delivery of high capacity Information Communications Technology Infrastructure and broadband connectivity throughout the county, in order to promote economic competitiveness and to facilitate more flexible work practices.

TCP 2: To co-operate with the Department of Communications, Energy and Natural Resources and public and private agencies where appropriate, in improving high quality broadband infrastructure throughout the County.

TCP 3: 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. **Monaghan County Council General Development Contribution Scheme 2021 - 2026**

5.2.1. The development contribution scheme was adopted in September 2021 and provides a scheme for the levying of financial contributions as part of grants of planning permission, under the terms of Section 48 of the Planning and Development Act, 2000, as amended.

5.2.2. Section 7 states that in general all planning permissions granted will be subject to the scheme and charges shall be levied as a condition under any permission granted. Appendix 3 contains the individual contribution levels and development class (n) relates to telecommunications infrastructure. I note that the Planning Authority's website contains annual, index linked updates to the contribution levels and of relevance to this appeal, the 2022 rate for telecommunications infrastructure is: -

- €10,750 per Mast/Installation,
- €5,400 per Antenna/dish installed on existing mast/Installation.

5.2.3. Section 17 relates to telecommunications developments and it states as follows: -

'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.

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 levied and paid for that development, and where no additional development over that previously permitted is proposed. Development contributions will be levied (where determined appropriate) in respect of any additional development proposed over that previously permitted.'

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

- 5.3.1. The Guidelines provide guidance in relation to telecommunications installations which form part of the requirements for licensed, public mobile telephony and which are deemed to be development in accordance with the Planning and Development Act.

5.4. Natural Heritage Designations

- 5.4.1. The site is not located within or adjacent to any designated European site, the closest such site being Slieve Beagh SPA (Site Code 004167), which lies c.5.4km north-west.
- 5.4.2. Mullaghmore Lake Proposed Natural Heritage Area (Site Code 001785) lies c.2km west.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows: -
- The appeal relates to condition No. 1 of the Planning Authority decision.
 - The required development contribution was incorrectly imposed.

- The S48 development contribution scheme provides an exemption telecommunications infrastructure that are deployed as part of a government endorsed telecommunications strategy, plan or initiative.
- The Board has previously determined under Refs. ABP-307993-20 and ABP-311262-21 that that the S48 development contribution scheme does not apply to proposed telecommunications masts.

6.2. Planning Authority Response

6.2.1. The Planning Authority made submissions on 20th January 2023 and 16th February 2023, the contents of which can be summarised as follows: -

- The S48 development contribution scheme has been correctly applied in this instance. Section 7 clearly states that the scheme applies to all planning permissions, where appropriate and it includes a category related to telecommunications infrastructure.
- At the AI stage the applicant confirmed that the proposed development will carry additional antennae and dishes and, accordingly, it was determined that a development contribution was payable.
- Regarding exemptions provided for by the scheme, the applicant did not conclusively demonstrate that the development is being deployed as part of a government endorsed strategy, plan or initiative or that it would provide services for customers who would not otherwise be able to avail of adequate services. It is also noted that a new structure is proposed, not an addition to an existing structure.

6.3. Observations

6.3.1. None.

6.4. Further Responses

6.4.1. None.

7.0 Assessment

- 7.1. Section 48(10) (b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.
- 7.2. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it were made to it in the first instance and will only determine the matters under appeal. The condition the subject of this appeal is No. 1.

Condition No. 1

- 7.3. Condition No. 1(a) was applied by the Planning Authority under the Monaghan County Council General Development Contribution Scheme 2021 - 2026 (DCS) and required payment of a financial contribution of €21,600. The condition indicates that this contribution goes towards expenditure incurred or proposed to be incurred by them in the provision of community, recreation and amenity public infrastructure and facilities in the area. It 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. In appealing the condition, the applicant argues that the terms of the DCS were incorrectly applied, as there is an exemption for telecommunications infrastructure that are deployed as part of a government endorsed telecommunications strategy, plan or initiative. Reference is also made to previous Board Orders on appeal Refs. ABP-307993-20 and ABP-311262-21, where it is argued the precedent has been established that the S48 development contribution scheme does not apply to proposed telecommunications masts.
- 7.5. In responding to the appeal, the Planning Authority submits that the DCS was correctly applied and that Section 7 clearly states that the scheme applies to all planning permissions, including telecommunications infrastructure. Regarding

exemptions, it is argued that the applicant did not conclusively demonstrate that the development is being deployed as part of a government endorsed strategy, plan or initiative or that it would provide services for customers who would not otherwise be able to avail of adequate services.

7.6. I have set out the relevant provisions of the DCS at Section 5.2 above and it can be seen there are two means by which the applicant can seek an exemption from the requirement to pay a financial contribution: -

- For telecommunications infrastructure 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.

7.7. The applicant does not indicate within the application or appeal documents that the development is being deployed as part of a government endorsed telecommunications strategy, plan or initiative. Moreover, I am satisfied based on the content of the application that the development comprises the upgrade of an existing facility which the applicant describes as 'underperforming'. On this basis, I am satisfied that this aspect of the exemption is not activated.

7.8. Regarding the exemption for installations which would improve mobile or broadband services, I note that the applicant states that the development will extend the reach of communications technologies into areas that currently have poor or non-existing mobile wireless voice and data services and will also provide a better choice of mobile and broadband operators. This argument was not accepted by the Planning Authority and I am inclined to agree with its determination.

7.9. The application was not supported by any evidential assessment, to indicate the level or extent of service deficiency that will be addressed by the development or, additionally, a submission by a licensed service provider outlining the service deficiency in the area that the development seeks to address. In the absence of same, it is my view that the proposal could reasonably be argued to comprise an extension of the facility, designed to accommodate additional service providers. I note in this respect that at the AI stage, the applicant confirmed that the existing

structures house 7 No. dishes and antennae and the proposed structure will house 11 No. dishes and antennae.

7.10. I therefore conclude that this aspect of the exemption is not activated and, further, that the development is therefore subject to the requirement to pay a financial contribution under the terms of the DCS.

7.11. Regarding the level of financial contribution payable, the Planning Authority's calculation is contained within the Planning Report and is based on a calculation 4 additional items x €5,400 = €21,600. I am satisfied that this is the correct calculation, in view of the fact that the existing structures were levied as part of Reg. Ref. 10/284 and the current contribution required by the Planning Authority represents the uplift in the total number of antennae/dishes to be housed on the proposed structure.

8.0 Recommendation

8.1. I recommend that condition No. 1 be retained.

9.0 Reasons and Considerations

9.1. The Board considered the Monaghan County Council Development Contribution Scheme 2021 - 2026 is the applicable development contribution scheme in this case and that it had been properly applied by the planning authority.

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.

Barry O'Donnell
Planning Inspector

12th May 2023.