



An
Bord
Pleanála

Inspector's Report PL10.248622

Development	Construction of telecommunications infrastructure comprising 15 metre multi-operator monopole with antennae and dishes, equipment and cabinets, fencing, use of existing access and access track.
Location	Barrowmount Td., Goresbridge, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	17/161.
Applicant(s)	Signal International Limited.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	First Party V Development Contribution only.
Appellant(s)	Signal International Limited.
Observer(s)	None.
Date of Site Inspection	Not applicable.
Inspector	Susan McHugh.

1.0 Site Location and Description

- 1.1. The site is located to the south of Goresbridge Village, Kilkenny. It is located approximately 0.5km south west of the junction between the R702 and the Barrow Mount Road and approximately 18km south east of Kilkenny City.
- 1.2. The site comprises the eastern corner of an agricultural field which is to the rear of an existing farmyard. It has a stated area of 0.008 hectares.

2.0 Proposed Development

- 2.1. The application is for the erection of a 15m monopole with antenna and dishes attached. A 2.4 metre high palisade fence will enclose the ground based equipment within a compound. An existing access track runs from the local road to the compound. The proposed structure will allow for improved coverage in Goresbridge and bring 4G broadband services to the town and surrounding area.
- 2.2. The application was accompanied by the following;
 - A Planning report
 - A Visual Impact report
 - An Appropriate Assessment Screening report

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to grant planning permission subject to 7 conditions.

Of relevance to this appeal is condition no, 2 as follows;

The Developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in Kilkenny County Council's administrative area that is provided or intended to be provided by or on behalf of the Local Authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Acts 2000-2015.

The amount of the financial contribution shall be paid upon commencement of development, with the amount of the contribution being the rate of contribution in existence on commencement of development. In accordance with the current scheme the amount of the contribution is calculated at €10,000 (ten thousand euro), however this amount may be recalculated in accordance with any newly adopted Development Contribution Scheme that may supercede the current scheme prior to commencement of development. Any applicable amount is subject to revision with reference to the Wholesale Price Index and to penalty interest in accordance with the terms of Kilkenny County Council's Development Contribution Scheme.

Reason: It is a requirement of the Planning and Development Acts 2000-2015 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.

3.2. Planning Authority Report

Planning Report

3.2.1. The planning report dated 08/05/2017 is the basis for the Planning Authority decision.

Includes:

- The site is not located within any Natura 2000 sites and no significant impact is likely on the River Barrow and River Nore SAC.
- Policy context.

Development Contributions Calculations report, dated 29/05/2017, recommends that a levy be applied. It notes;

- A levy of €10,000.00 (1 No. 15m high mast) is to be applied.

4.0 Planning History

There is no planning history relevant to the site.

5.0 Policy Context

- **Telecommunications Antenna and Support Structures – Guidelines for Planning Authorities 1996.**
- **DoEHLG Circular Letter PL07/12** - The Circular referred to the then Draft Guidelines for Development Contribution Schemes, and the requirement that all future Development Contribution Schemes must include waivers for broadband infrastructure provision.
- **Development Contributions Guidelines for Planning Authorities - Department of the Environment, Community and Local Government January 2013** – Chapter 2 of the Guidelines notes that planning authorities are required to include waivers for broadband infrastructure (masts and antennae).

5.1. Development Plan

The operative plan is the Kilkenny County Development Plan 2014-2020.

Section 9.4.2.2 Telecommunications Antennae Objective

‘To set up and maintain a register of approved telecommunications structures which will provide a useful input to the assessment of future telecommunications developments and would also be useful from the point of view of maximising the potential for future mast sharing and co-location.’

5.2. Kilkenny County Council Development Contribution Scheme 2016-2017

5.2.1. I refer to the following provisions relevant to this appeal:

The development contribution scheme outlines that the following contributions are payable with regard to telecommunication masts (page 4).

Section	Description of Development	Unit	Rate of Charge
15.	Communication Masts	Per Mast	€10,000.00

Exemptions from the payment of Development Contributions indicates '*Masts and antennae and other apparatus for communication purposes that form part of the National Broadband Scheme or a subsequent endorsed initiative as defined by the Department of Communication, Energy and Natural Resources.*' (page 6).

6.0 The Appeal

6.1. Grounds of Appeal

The appeal relates to condition no. 2 of the Planning Authority's decision to grant planning permission which includes the payment of a sum of €10,000.00 in accordance with the Development Contribution Scheme.

The grounds of the appeal can be summarised as;

- The terms of the Kilkenny County Council Development Contribution Scheme have not been properly applied.
- The application of the levies should have taken account of the *Development Contributions Guidelines for Planning Authorities* published by the Department of the Environment, Community and Local Government in January 2013. The guidelines are clear in their direction to provide waivers for broadband infrastructure, and the 'broadband infrastructure' exemption in this instance is a reasonable one.
- The exemptions contained within the development contribution scheme (page 6) are applicable to this development. The proposed development constitutes 'equipment for communication purposes that form part of the National Broadband Scheme or a subsequent endorsed initiative as defined by the Department of Communication, Energy and Natural Resources'.
- The National Broadband Plan and the report of the Mobile Phone and Broadband Taskforce is the 'subsequent endorsed initiative as defined by the Department of Communication, Energy and Natural Resources' as per the exemptions in the development contribution scheme. Therefore, no contribution should be payable for the proposed communications infrastructure. The proposed development represents commercial private

investment in capital infrastructure and economic activity as proposed in the actions of the taskforce report and outlined in the guidelines.

- The applicant is Signal Infrastructure Limited – Ireland’s newest telecommunications infrastructure provider. In August 2015 it completed the acquisition of the telecommunications tower assets of Coillte Teoranta. Their approach to infrastructure provision is wholly in accordance with national policy which seeks to improve telecommunications services through the provision of suitably sited, sensitively designed support structures which can accommodate multiple operators and service providers, in the interest of avoiding the proliferation of towers.

6.2. **Planning Authority Response**

The planning authority had no further comments.

6.3. **Observations**

None.

7.0 **Assessment**

- 7.1. This is an appeal in relation to the application of a development contribution only. The Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal.
- 7.2. An appeal may be brought to the Board where an applicant for permission under section 34 considers the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the planning authority. In this appeal, the issue to be considered is whether the terms of the Scheme have been properly applied.
- 7.3. The current proposal is for the construction of telecommunications infrastructure comprising a 15 metre multi-operator monopole with antennae and dishes, equipment and cabinets, fencing, use of existing access and access track. The calculation of the levy of €10,000.00 was based on a single mast as provided for in the Development Contribution Scheme.

- 7.4. The Development Contribution Scheme permits exemptions but no reference was made by the planning authority to the relevant exemption in this case, namely *'Masts and antennae and other apparatus for communication purposes that form part of the National Broadband Scheme or a subsequent endorsed initiative as defined by the Department of Communication, Energy and Natural Resources.'*
- 7.5. The applicant submits that the proposed development constitutes equipment for communication purposes that forms part of the *National Broadband Plan* and the *Report of Mobile Phone Taskforce* and is the 'subsequent endorsed initiative defined by the Department of Communication, Energy and Natural Resources' as per the exemptions and that no contribution should be payable for the proposed communication infrastructure.
- 7.6. In support of its appeal the applicant has provided details to support its claim, namely that as Irelands newest telecommunications infrastructure provider; having completed the acquisition of the telecommunications tower assets of Coillte Teoranta; and acquired tower infrastructure at over 300 hundred locations around Ireland with plans to further develop and expand its portfolio, they have established commercial relationships with all of the Irish mobile and wireless broadband operators as well as emergency, transport, and other communications service providers. It is submitted that they are now in a position to play a key role in the provision of new shared tower infrastructure across Ireland which will encourage and support the deployment of mobile phone and wireless broadband coverage by all operators into rural Ireland.
- 7.7. I note that the *National Broadband Plan* aims to change the broadband landscape in Ireland through a combination of commercial and State led investment, and that the purpose of *Report of the Mobile Phone and Broadband Taskforce* is to deliver the *National Broadband Plan* in the shortest time possible time. In my opinion the *National Broadband Plan* and the *Report of the Mobile Phone and Broadband Taskforce* can be considered to be the 'subsequent endorsed initiative as defined by the Department of Communication, Energy and Natural Resources' as per the exemptions in the development contribution scheme. In my opinion the details provided are sufficient to support this case and meet the requirements of the exemption.

- 7.8. The applicant also refers to the *Development Contributions Guidelines for Planning Authorities* and the requirement for planning authorities to include waivers for broadband infrastructure (masts and antennae). The applicant also makes a strong case in relation the proposed development which represents commercial private investment in capital infrastructure and economic activity as proposed in the actions of the taskforce report and outlined in the guidelines.
- 7.9. I am satisfied that the case put forward by the applicant is reasonable in the context of the exemptions, and that in the current case the applicant is entitled to avail of the exemption in respect of the mast.
- 7.10. I am satisfied that the Development Contribution Scheme has **not** been correctly applied.

8.0 Recommendation

- 8.1. I recommend that Kilkenny County Council be directed to remove Condition No. 2 on the grounds that the terms of the Development Contribution Scheme 2016-2017 have not been properly applied.

9.0 Reasons and Considerations

Having regard to

- (a) The provisions of the Kilkenny County Development Contribution Scheme 2016-2017 and which includes an exemption for *Masts and antennae and other apparatus for communication purposes that form part of the National Broadband Scheme or a subsequent endorsed initiative as defined by the Department of Communication, Energy and Natural Resources; and*
- (b) The submission made in this appeal;

The Board considers that the proposed development constitutes part of the government endorsed national roll out of broadband services, and that the terms of the Development Contribution Scheme have not been properly applied.

Susan McHugh
Planning Inspectorate

21st September 2017