



An  
Bord  
Pleanála

## Inspector's Report ABP-300326-17.

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<b>Development</b>	Construction of 24 metres high telecommunications support structure carrying antennae and link dishes with associated equipment units, security fencing and access track.
<b>Location</b>	Stonecarthy East, Stoneyford, County Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority Reg. Ref.</b>	17/266.
<b>Applicant(s)</b>	Three Ireland (Hutchison) Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Permission with conditions.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Three Ireland (Hutchison) Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	25 <sup>th</sup> April 2018.
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

- 1.1. The site is located on the outskirts of but physically separated from the village of Stoneyford in County Kilkenny. The mast is located off a local road to the west of the village which to the east has a junction with the main street running through the village. The site of the mast is relatively elevated in the context of the local area is located approximately 150 metres off the road and there is a recently constructed track constructed from the site to the local road.
- 1.2. On the site is an enclosed fenced compound within which, is located a monopole telecommunications support structure with antennae and dishes mounted on the structure and an equipment cabin with perimeter fencing.
- 1.3. The site is not immediate to any residential development but is in close proximity to the village.

## 2.0 Proposed Development

- 2.1. The development which is subject of this appeal and as applied for to the planning authority on the 11<sup>th</sup> of April 2017 is for the construction of a 24 metres high monopole telecommunications support structure carrying antennae and link dishes with associated equipment and also for 2.4-metre-high palisade security perimeter fencing. The proposed development also provides for an access track from the site of the mast to the local road.
- 2.2. Details submitted with the application include
  - data relating to the justification of the development in relation to providing an improved telecommunication infrastructure and addressing current deficiencies in the area and the removal of an existing mast in the area.
  - A photomontage relating to visual impact was submitted.
  - An assessment of alternative sites in the area.
  - An appraisal in the context of national and local policy.
- 2.3. Further information was submitted on the 3<sup>rd</sup> August 2017 which included,

- Details relating to visual impact including additional photomontages.
- Clarification in relation to lo-location.
- Clarification in relation to the site access.

2.4. Further details were submitted in relation to the site access on the 15<sup>th</sup> September 2017 and the 10<sup>th</sup> October 2017.

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

The decision of the planning authority was to grant planning permission subject to 8 conditions. The following

- Condition no.2 requires the payment of a contribution of €10,000 in accordance with the council's development contribution scheme.
- Condition no. 5 refers to co-location.

### 3.2. **Planning Authority Reports**

#### 3.2.1. **Planning Reports**

The planning report dated the 30<sup>th</sup> of May 2017 refers to;

- Provisions of the Kilkenny County Development Plan and department circular letter.
- An assessment which refers to the surrounding area and the context of the site and area including existing mast structures and an assessment of alternative sites considered by the applicant.
- Further information was recommended in relation to visual impact, details relating to other masts in the area and details and clarification relating to the access.

The planning report dated the 21<sup>st</sup> of August 2017 recommended further clarification in relation to the site access.

- 3.3. The planning report dated the 4<sup>th</sup> of October 2017 having considered further information submitted recommended further clarity in relation to the site access.
- 3.4. The planning report dated the 26<sup>th</sup> of October 2017 having considered further information submitted recommended permission.

3.5. **Other submissions.**

A submission was received from residents in the area referring to visual impact, the relative distance of the mast to dwellings, the church and schools, the issue of co-location and health risks.

## 4.0 **Planning History**

- 4.1. The site has no planning history.

## 5.0 **Policy Context**

### 5.1. **National Guidelines**

I refer to **Circular Letter: PL 07/12 Telecommunications Antennae and Support Structures Guidelines** which was issued to update certain sections of the Telecommunications Antennae and Support Structures Guidelines (1996).

Section 3 refers to Draft Guidelines on Contribution Conditions; that there is a requirement for greater consistency in Development Contribution Schemes on a national basis and that the Draft Guidelines require *“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”*.

### 5.2. **Kilkenny County Development Plan 2014-2020**

- 5.2.1. Chapter 9 of the Development Plan and in particular section 9.4.2 refers to Telecommunications Masts and Antennae and refers to the importance of a high quality telecommunications service and balancing this need with protecting residential amenities and the quality of the environment.

5.2.2. Section 9.4.2.1 outlines development management standards in matters relating to visual impact, co-location and department guidance. Areas where masts are discouraged are high scenic locations, in proximity to community buildings and residential areas. Co-location is encouraged and the requirement to locate must be demonstrated.

### 5.3. **Kilkenny County Council Development Contribution Scheme 2016 – 2017.**

5.3.1. In relation to the level of contribution in a table category 15 refers to Communication Masts with a contribution rate of €10,000 per mast.

5.3.2. It is stated that “*Exemptions/Reductions will NOT apply to Retention applications*”.

5.3.3. In relation to Exemptions from the payment of Development Contributions it is indicated that “*the following categories of development will be exempted from the requirements to pay development contributions under the scheme*”.

Among the categories are “*Masts and antennae and other apparatus/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. Any new buildings associated with masts and antennae will be charged at the commercial rate*”.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The appeal relates to an appeal of condition no.2 of the planning authority’s decision to grant permission.

- Condition no.2 requires the payment of a contribution of €10,000.
- It is considered that the terms of the current Kilkenny Development Contribution Scheme have not been properly applied.
- Reference is made to the schemes exemptions and that “*masts and antennae and other apparatus/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*” are stated as exempted.

- Reference is made to 2013 guidance to planning authorities and that the guidelines state that waivers are required for broadband infrastructure.
- The development as proposed is for broadband infrastructure and this scheme was rolled out under the National Broadband Scheme which ended in August 2014.
- The new focus is for a National Broadband Plan and the report of the Mobile Phone and Broadband Taskforce is the subsequent government endorsed initiative as per the exemptions in the development contribution scheme and that no contribution should be payable for the proposed communications infrastructure.
- There is recognition of the private sector investing in telecommunications infrastructure and the current proposal represents such commercial private investment.
- Reference is made to a previous decision of the Board in support of the appeal ABP Ref PL.10.248622.

## 6.2. Planning Authority Response

The planning authority in a response dated the 20<sup>th</sup> of December 2017 indicates that it considers that the exemption applies.

## 7.0 Assessment

This is third party appeal against condition no.2 of the planning authority's decision to grant planning permission.

- 7.1. This application is for a new telecommunication mast and the appeal relates to a third party appeal against condition no.2 of the planning authority's decision to grant planning permission.
- 7.2. I will initially address the grounds of appeal and then address other matters.
- 7.3. The appeal relates to a contribution of €10,000 as stated in the grounds of appeal and it is considered that the terms of the current Kilkenny Development Contribution Scheme have not been properly applied. Reference is made to the Schemes

exemptions and that “*masts and antennae and other apparatus/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*” are stated as exempted.

- 7.3.1. The planning authority in a response dated the 20<sup>th</sup> of December 2017 indicates that it considers that the exemption applies and therefore I consider it is reasonable that the requirement for a contribution as stated in condition no 2 does not apply and the Board have made a similar determination in ABP Ref PL.10.248622. I consider that a development contribution should not be applied in relation to this development.
- 7.4. In relation to the principle of permitting the mast itself there is general support at national local policy levels for the provision of broadband infrastructure. The provisions of the current county development plan reflect national policy and guidance in the assessment of individual mast proposals. I would have no objection to the principle of the development.
- 7.5. In relation to visual impact the applicant submitted photomontages of potential impact as part of the application documentation. The mast has subsequently been constructed and it is possible to evaluate visual impact. The mast although located in relatively elevated terrain is only visible in its immediate surroundings and not visible from the village or wider area. I would have no concerns in relation to visual impact.
- 7.6. In relation to issues of site selection and co-location these matters were addressed in documentation submitted. The mast will replace an existing mast in the area which will be decommissioned. There is provision to permit other operators to use the facility. I would have no objections in relation to matters relating to site location and co-location.
- 7.7. In relation to impacts on residential amenity and proximity to residential dwellings and community facilities, the site although it is close proximity to the village is not immediately located close to dwellings or community facilities. The site and the placement of a mast on the subject site does not present issues in relation to impact on amenity.
- 7.8. The appeal can I consider be determined in relation to condition no.2 of the planning authority's decision to grant permission.

## 8.0 Recommendation

- 8.1. The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition number 2 and directs the said Council to REMOVE condition number 2 and the reasons therefor.

## 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 considered based on the evidence submitted that the proposed development constitutes equipment for communications 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 that the terms of the Development Contribution Scheme have not been properly applied.

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Derek Daly  
Planning Inspector

27<sup>th</sup> April 2018