



An  
Bord  
Pleanála

## Inspector's Report ABP-301877-18

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<b>Development</b>	30m high telecommunications support structure
<b>Location</b>	IDA Business Park, Green Road, Newbridge, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	18397
<b>Applicant(s)</b>	Three Ireland Service Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with conditions
<b>Type of Appeal</b>	First Party Vs Condition
<b>Appellant(s)</b>	Three Ireland Service Ltd.
<b>Observer(s)</b>	None
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

1.1. The subject site is located in the IDA Newbridge Business Park which is immediately north of the M7 to the south of Newbridge town. The site for the telecommunications structure is along the eastern axis of the Business Park to the rear of it.

## 2.0 Proposed Development

2.1. Construction of a 30metre high telecommunications support structure carrying antennas and dishes with associated ground level equipment units and security fencing.

## 3.0 Planning Authority Decision

### 3.1. Decision

Kildare County Council granted the proposal subject to 5No. standard conditions including No. 5 the subject of this appeal which requires the payment of €9000 as a development contribution.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Development Contributions Calculations:

As per paragraph 8(x) of the Development Contribution Scheme 2015- 2022 a charge of €10,000 will be applied for the granting of permission for the mast. A 10% reduction is applicable as -per Paragraph 8 (x)(a)

#### 3.2.2. Other Technical Reports

No objections to the proposal from other departments.

### 3.3. **Prescribed Bodies**

No objections to the proposal from Irish Water.

### 4.0 **Planning History**

The planning history relating to the IDA Business Park is not relevant to the current proposal

### 5.0 **Policy Context**

#### 5.1. **National Policy**

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).

Department of Housing, Planning and Local Government – Circular letter PL03/2018- Revision of Development Contribution Guidelines In respect of Telecommunications Infrastructure.

#### 5.2. **Development Plan**

**Section 8.13 Telecommunications Structures** is the relevant section of Kildare County Development Plan 2017-2023

**Policy: TL 5** Have regard to the provisions of the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (1996) and circular letter PL07/12 and to such other publications and material as may be relevant during the period of the Plan.

### **Section 8.14 Broadband**

These relevant sections are appended to this report.

## **5.4 Kildare Development Contributions Scheme 2015-2022**

### **(x) Telecommunication Masts**

A charge of €10,000 will be applied to each mast granted by the planning authority, allocated as follows:

Roads 50%  
Recreation & Amenity 40%  
Community 10%

- a. A reduction of 10% will be applied where the Planning Authority is satisfied that the proposed structure is suitably camouflaged in order to mitigate its visual impact.
- b. A reduction of 10% will be applied where the Planning Authority is satisfied that the proposed mast is more than 1Km from any institutional building.
- c. A 100% reduction will be applied where masts for communication purposes form part of the National Broadband Scheme (NBS) as defined by the Department of Communication, Energy and National Resources.

## **5.3. Natural Heritage Designations**

The subject site is not located within any designated site. The closest Natura 2000 sites are:

Pollardstown Fen SAC (Site Code 000396) is located c.4km to the north-west.  
Mouds Bog SAC (Site Code 002331) is located c.6km to the north. River Barrow and River Nore SAC (Site Code 002162) is located c.9km to the south-west

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Three Ireland Limited has taken this appeal against Condition No. 5 of the planning decision to grant permission for a 30metre telecommunications support structure at the IDA Business Park, Newbridge, Co. Kildare. The appeal is being made under Section 48(10)(b) of the Planning and Development Act 2000.

#### History

Kildare Co. Co. decided to grant planning permission for the development on 1<sup>st</sup> of June 2018 subject to 5No. conditions. Condition No. 5 states the applicant must pay €9000 in accordance with the adopted development contribution scheme (November 2015).

### 6.2 Grounds

- The development contributions scheme states a charge of €10,000 shall be applied to each mast granted by the planning authority allocated as follows:

Roads	Recreation	Community
50%	40%	10%

A reduction of 10% is given provided certain requirements are adhered to.

- The Development Contributions Guidelines for Planning Authorities (2013) highlights the importance of economic development. Planning authorities were required to include waivers for broadband infrastructure (masts and antennae). Therefore, it can be considered that the application of the broadband infrastructure exemption in this instance is a reasonable one.
- Case reference PL10.248622 in Kilkenny is similar to the current appeal.
- The purpose of the *Report of the Mobile Phone and Broadband Taskforce* is to deliver the National Broadband Plan in the shortest time possible and to reduce Irelands urban- rural divide. The proposed development is in line with

Mobile Phone and Broadband Taskforce, it involves private investment in the provision of increased and improved services. The proposed development will provide fast and efficient voice, data and mobile broadband connectivity (3G and 4G) in the Newbridge area and along the M7.

- The National Broadband Scheme no longer exists and that it is reasonable to interpret that the exemption applicable to the to the National Broadband Scheme as specified in the Kildare County Development Contributions Scheme apply to the development which is proposed. It is a reasonable assumption in light of the fact the Department of Communications, Climate Action and Environment states their focus is now on the delivery of high speed broadband landscape in Ireland through a combination of state led approaches.

## 6.2. Planning Authority Response

Development Contributions of €9,000 were applied to Planning Registration No. 18/397 as were calculated by the Development Contributions Report.

Circular PI03/2018 from the department of Housing, Planning and Local Government dated 3<sup>rd</sup> of July 2018, states

*'The 2013 Guidelines are amended accordingly in Chapter 2 and it is now a requirement that waivers for broadband infrastructure (masts and antennae) be extended to include mobile phone infrastructure.'*

The planning authority recommends a 100% waiver of the development contribution to be backdated to the planning authority's decision on the 1<sup>st</sup> of June 2018.

## 7.0 Assessment

- 7.1. This assessment relates to a first party appeal under Section 48(10) of the Planning and Development Act, 2000, as amended. The First Party has appealed Condition No. 5 of the decision of Kildare County Council to grant planning permission for the proposed development. In considering this case the Board is bound by the adopted Development Contributions Scheme for the area and cannot deviate from same.

The adopted Scheme is not open for interpretation by the Board as referenced in Cork City Council- V- An Bord Pleanala (2006).

- 7.2 The Kildare Development Contributions Scheme is applicable to years 2015-2022. The relevant section of the adopted Scheme is Section 8(x)

(x)Telecommunication Masts

A charge of €10,000 will be applied to each mast granted by the planning authority, and furthermore a reduction of 10% will be applied where the Planning Authority is satisfied that the proposed structure is suitably camouflaged in order to mitigate its visual impact.

I note from the Planner's Report the planning authority were satisfied the visual impact of the structure would be minimised, therefore the development contribution applied in Condition 5 was €9000.

- 7.3 The Board should note the relevant section of the adopted scheme 8(x) cited above also includes a section c

*c. A 100% reduction will be applied where masts for communication purposes form part of the National Broadband Scheme (NBS) as defined by the Department of Communication, Energy and National Resources.*

The Department of Communications, Climate Action and Environment states that their focus, following the completion of the National Broadband Scheme on August 2014, was to focus now on the delivery of high speed broadband landscape across Ireland. The Governments National Broadband Plan (NBP) aims to change the broadband landscape through a combination of commercial and State led investments. It is considered the National Broadband Plan and the Report of the Mobile Phone and Broadband Taskforce is an equivalent and subsequent programme for broadband provision as per the National Broadband Scheme (now expired). It should be noted the current Kildare Development Contributions Scheme refers to the expired National Broadband Scheme stating that a reduction of 100% would apply to all applications for communications purposes. I consider it reasonable that the *National Broadband Plan* and *the Report of the Mobile Phone and Broadband Taskforce* is to deliver the broadband in the shortest time possible to

rural areas, and therefore the National broadband plan and the Report of the Mobile Phone and Broadband Taskforce can be considered the new definition of the NBS as defined by the Department of Communication, Energy and National Resources. In my opinion, the adopted Kildare County Development Contribution Scheme should be revised to include this change as the National Broadband Scheme ceased prior to the adoption of the development contribution scheme in 2015. Please note the Circular Letter PL03/2018 from the Department of Housing, Planning and Local Government dated 3<sup>rd</sup> of July 2018, requested the local authorities to update their outdated references in the adopted schemes.

7.4 In addition, Circular Letter PL03/2018, states that local authorities who have not updated their Development Contributions Schemes in line with Action 3 of the Report of the Mobile Phone and Broadband Taskforce should do so as soon as possible, requiring the waivering of contributions to any telecommunications structure both mobile and broadband.

7.5 Finally, Kildare Co. Co. in its response to the First Party appeal recommended a 100% waiver of the development contribution applied in Condition No. 5 in light of the Circular PL03/2018 publication during the assessment of the appeal.

## **8.0 Recommendation**

I recommend that Kildare County Council be directed to remove Condition No. 5 on the grounds that the terms of the Development Contribution Scheme 2015-2022 have not been properly applied.

## **9.0 Reasons and Considerations**

Having regard to

(a) The provisions of the Kildare County Development Contribution Scheme 2015-2022 and which includes an 100% reduction for Masts and antennae and other apparatus for communication purposes that form part of the National Broadband Scheme or relevant terminology in the current Scheme to be updated under the



terms of Circular Letter PL03/2018 from the Department of Housing, Planning and Local Government dated 3<sup>rd</sup> of July 018,; 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.

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Caryn Coogan  
Planning Inspector

28<sup>th</sup> of September 2018