



An
Bord
Pleanála

Inspector's Report

ABP-305998-19

Development

24m high multi-user lattice telecommunications support structure, carrying antennae and dishes enclosed within a 2.4 metre high palisade fence compound together with associated ground equipment cabinets, associated site works and access track.

Location

Dicksboro GAA, Kilcreen, Co Kilkenny

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

19/658

Applicant

Signal Infrastructure Ltd.

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

First Party v Development
Contribution Only

Appellant

Signal Infrastructure Ltd.

Date of Site Inspection

19.02.2020

Inspector

Anthony Kelly

1.0 Introduction

- 1.1. This report relates to a first-party appeal against Condition No. 2 of the planning authority decision to grant permission for the development. Condition No. 2 relates to the payment of a development contribution of €10,000 in accordance with the Kilkenny County Council Development Contribution Scheme 2015-2017. Section 48(10)(b) of the Planning & Development Act, 2000 (as amended) states that an appeal may be brought to the Board where an applicant considers that the terms of the development contribution scheme have not been properly applied.

2.0 Site Location and Description

- 2.1. The site is located within the grounds of Dicksboro GAA Club which is located just to the west of Kilkenny City.
- 2.2. There is a car parking/vehicular circulation area, two GAA pitches, floodlights, ball nets, a clubhouse building, a hurling wall and a scoreboard within the grounds. The specific area subject of the application is parallel to the south western boundary and in the southern corner. There is a tree line along the site boundary at this location.

3.0 Proposed Development

- 3.1. The application is for permission to construct a 24 metres high multi-user lattice telecommunications support structure, carrying antennae and dishes, enclosed within a 2.4 metres high palisade fence compound together with associated ground equipment cabinets and associated site works and access track.
- 3.2. In addition to standard planning application plans and particulars the application was accompanied by a 'Planning Application' document and 'Visual Impact Photomontages'.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission for the development subject to 7 no. conditions. Condition No. 2 requires the payment of a development contribution as follows;

‘2. The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefitting 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 2000-2018.

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 €10,000.00 (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 2000-2018 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.’

4.2. Planning Authority Reports

- 4.2.1. The Planning Officer’s report was the basis for the decision. The Planning Officer considered that, having regard to national strategy regarding improvement of communications services, departmental guidelines relating to telecommunications antennae and support structures, the provisions of the Kilkenny City Development Plan 2014-2020 and the location and design of the development, the development

would not seriously injure the amenities of the area and would accord with the proper planning and sustainable development of the area. The Senior Planner directed inclusion of Condition Nos. 3 (restricting the development to a temporary five-year permission unless permission is granted for its continuance) and 7 (consultation with the Irish Aviation Authority).

4.2.2. **Other Technical Reports**

None.

4.3. **Prescribed Bodies**

None.

4.4. **Third Party Observations**

A submission was received from the Station Manager of Community Radio Kilkenny City which states that Kilkenny Community Communications Co-op Society Ltd. operates a Community Sound Broadcasting licence and the co-op owns a mast/tower at Mount Nugent, Johnswell, Co. Kilkenny.

5.0 **Planning History**

None relevant.

6.0 **Policy Context**

6.1. **Kilkenny City & Environs Development Plan 2014-2020**

6.1.1. The site is in an area zoned 'Amenity/Green links/Biodiversity' under the Plan which has an objective to allow for green links and biodiversity conservation and to preserve, provide and improve recreational open space.

6.1.2. Section 8.4 (Telecommunications) of the Plan states that the Council recognises the importance of advanced communications infrastructure and will support and facilitate

provision of same. Sections 8.4.1 (Broadband) and 8.4.2 (Telecommunications Antennae) are also relevant to the development.

6.2. Kilkenny County Council Development Contribution Scheme 2015-2017

6.2.1. The Scheme was adopted by the members on 20.04.2015. The Scheme applies for a minimum of three years and will continue past the end of 2017 until such time as a new Scheme is adopted.

6.2.2. The level of development contribution for a communication mast is cited on Page 4 as €10,000 per mast.

6.2.3. Page 6 sets out categories of development which will be exempt from the requirements to pay development contributions under the Scheme. These exemptions include;

'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'.

6.3. Telecommunications Antennae and Support Structures Guidelines for Planning Authorities, 1996

6.3.1. These guidelines, and the subsequent Circular Letter PL 07/12, are relevant to applications for telecommunications structures.

6.4. Natural Heritage Designations

6.4.1. The closest Natura 2000 sites are River Nore SPA and River Barrow and River Nore SAC approx. 1.3km to the east. The closest heritage area is Lough Macask pNHA approx. 650 metres to the north.

7.0 The Appeal

7.1. Grounds of Appeal

The main points raised in the grounds of appeal can be summarised as follows

- A detailed background of the applicant and national broadband and communications policy is provided. The development is designed to deliver on the Government's National Broadband Plan.
- The Development Contributions Guidelines for Planning Authorities 2013 states adopted development contribution schemes should contribute to the promotion of, inter alia, securing investment in capital infrastructure and economic activity. The guidelines require planning authorities to include waivers for broadband infrastructure (masts and antennae).
- The Department of Communications, Climate Action and Environment published a Report of the Mobile Phone and Broadband Taskforce in December 2016 which states that the application of development contributions to telecommunications infrastructure will cease in every local authority area from early 2017.
- Circular Letter PL 07/12 referred to the then Draft Guidelines for Development Contributions which stated that all future Development Contribution Schemes must include waivers for broadband infrastructure provision.
- Circular Letter PL 03/2018 stated that Local Authorities have been notified that the 2013 Guidelines have been amended and it is now a requirement that waivers for broadband infrastructure be extended to include mobile phone infrastructure.
- Communication masts are listed in the Development Contribution Scheme with a rate of charge listed as €10,000 per mast. Exemptions from the payment of development contributions on Page 6 includes 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 Communications, Energy and Natural Resources. Any new buildings associated with masts and antennae

will be charged at the commercial rate. A waiver as outlined is applicable as the development forms part of the National Broadband Plan and there are no buildings associated with the mast or antennae equipment, only cabinets.

- The documentation submitted with the application specifically references that the development forms part of the National Broadband Plan and Government endorsed initiative. It is supported by the Department of Communications, Climate Action & Environment's interactive map which shows the site is in an area identified as a target area for State intervention in the National Broadband Plan.
- Two previous similar applications had development contributions attached which An Bord Pleanála subsequently considered had not been properly applied. These are P.A. Reg. Ref. 17/161, ABP Reg. Ref. PL10.248622 at Goresbridge, Co. Kilkenny and P.A. Reg. Ref. 18600549, ABP Reg. Ref. ABP-302609-18 at Thurles, Co. Tipperary. The applicant anticipates the Board will direct the planning authority to remove Condition No. 2.

7.2. Planning Authority Response

The planning authority response can be summarised as follows:

- It is the Council's view that the terms of the Development Contribution Scheme have been applied correctly.
- The relevant exemption in the Scheme is cited and it is stated that the National Broadband Scheme expired on 25.08.2014. The appellant contends that the National Broadband Plan replaced this initiative, but this was not in effect at the time the Council issued a Notification to Grant Permission and therefore the exemption did not apply at the time of issue on 07.11.2019.
- Furthermore, the applicant is a private company proposing to build infrastructure which will have a commercial value to them as both a service provider and by charging other operators to share the facility.

8.0 Assessment

- 8.1. The application is for permission for a 24 metres high telecommunications support structure carrying antennae and dishes, a fenced compound and an access track. On the site inspection development had commenced. Notwithstanding, this is a first-party appeal in relation to Condition No. 2 of the planning authority decision which requires payment of a development contribution of €10,000. An appeal may be brought to the Board where an applicant considers that the terms of a Development Contribution Scheme has 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.
- 8.2. It appears that the Kilkenny County Council Development Contribution Scheme 2015-2017 is the relevant document as it has not yet been replaced. The Scheme requires a development contribution of €10,000 per communication mast. There is an exemption to this contribution contained within the Scheme. This applies where a mast, antennae or other apparatus for communication purposes forms part of the National Broadband Scheme or a subsequent endorsed initiative by the Department of Communications, Energy and Natural Resources.
- 8.3. The applicant claims that the development is designed to deliver on the Government's National Broadband Plan and the development contribution should be waived under the exemption set out in the Scheme. It is stated the Board have removed development contributions from previous similar applications. However, the planning authority considers that the terms of the Scheme have been correctly applied. It is stated that the applicant is a private operator building infrastructure that will have a commercial value to them.
- 8.4. The application documentation states the development will form part of eir Mobile communications network and Imagine Broadband as well as providing space for future broadband providers for the area. The area is experiencing deficient 3G and 4G coverage in terms of wireless telecoms infrastructure services. The application has been designed to address this coverage blackspot. The National Broadband Plan is referenced in Section 9.2 of the 'Planning Application' document received by the planning authority. The site is identified as being in an 'amber' area, which is a target area for State intervention of the National Broadband Plan. However, with the

current application the applicant states they are proposing to install the required infrastructure to facilitate broadband provision and thus circumvent the capital cost to the State.

- 8.5. The Department of Communications, Climate Action and Environment website states that the National Broadband Plan is their framework for the provision of high speed broadband through a combination of commercial and State investment and that delivery to all parts of Ireland is the Department's priority. It is also stated that the Plan follows previous initiatives such as the National Broadband Scheme which provided basic broadband services in areas that could not be commercially served. It would therefore reasonably seem that the Plan is a 'subsequent endorsed initiative' as defined by the Department, notwithstanding the name change from the Department of Communication, Energy and Natural Resources. In addition, the fact that improved broadband services are being provided by a commercial operator rather than the State does not appear to exclude it from the exemption offered by the Development Contribution Scheme.
- 8.6. In the two precedent applications outlined in the grounds of appeal, P.A. Reg. Ref. 17/161, ABP Reg. Ref. PL10.248622 at Goresbridge, Co. Kilkenny and P.A. Reg. Ref. 18600549, ABP Reg. Ref. ABP-302609-18 at Thurles, Co. Tipperary, similar issues arose and in both cases the Board directed the planning authority to remove the relevant development contribution condition.
- 8.7. Having regard to the foregoing I consider that the development can be considered to aid the National Broadband Plan and I consider that the planning authority failed to correctly apply the terms and conditions of the Development Contribution Scheme in this instance.

9.0 Recommendation

I recommend that the planning authority be directed to remove Condition No. 2 on the grounds that the terms of the Development Contribution Scheme 2015-2017 have not been properly applied.

10.0 Reasons and Considerations

Having regard to:

(a) The provisions of the Kilkenny County Council Development Contribution Scheme 2015-2017 which includes an exemption for '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', and

(b) The submission made in the appeal,

It is considered that the proposed development constitutes a development for communications purposes that forms part of the National Broadband Scheme or a subsequent endorsed initiative as defined by the Department of Communications, Climate Action and Environment, and that the terms of the Development Contribution Scheme have not been properly applied.

Anthony Kelly

Planning Inspector

25.02.2020