



An
Bord
Pleanála

Inspector's Report ABP-310469-21

Development	Permission for the removal of existing 15 metre lattice mast structure and to erect a new 20 metre lattice telecommunications support structure and associated equipment
Location	Eir exchange, Smiths Road, Ballyraggett, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	20/562
Applicant(s)	Vodafone Ireland Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party -v-Condition
Appellant(s)	Vodafone Ireland Ltd.
Observer(s)	None
Inspector	Fergal Ó Bric.

1.0 Site Location and Description

1.1 The appeal site is located within the village boundary of Ballyraggett, north-east of the Village Green. The appeal site comprises the established Eircom exchange building and is located within a row of dwelling houses along Smiths Road, opposite Green View residential estate. The site is located outside of the designated Village Architectural Conservation Area (ACA). The site comprises a 15-metre-tall telecommunications lattice support structure, antennae and dishes and associated equipment within a fenced compound.

2.0 Proposed Development.

- 2.1 Permission is sought for the removal of an existing 15-metre-tall lattice telecommunications structure and the erection of a replacement 20 metre replacement lattice telecommunications support structure, antennae, dishes and associated equipment enclosed within a security fencing compound.
- 2.2 Further information was submitted to the Planning Authority in April 2021 in relation to: Clarification of the planning status of the telecommunications infrastructure on site, Alternative locations considered, demonstrating the site-specific need for the development, submission of a Visual impact Assessment and photographic montages and clarification on whether the proposals would form part of the National Broadband scheme.

3.0 Planning Authority Decision

3.1 A grant of planning permission was issued subject to seven conditions. The following conditions are of relevance:

Condition number 1: Development shall be carried out in accordance with the documentation and particulars lodged with the application on the 27th day of August

2020, as amended by further information received by the Planning Authority on the 16th day of April 2021.

Condition number 2: Development contribution of €10,000.00.

3.2 Planning Authority Reports

Planning Reports

Conservation Officer: Stated within the planning report that the initial concerns expressed regarding impact upon the Village ACA have been addressed.

Environment Department: No objections, subject to conditions.

Roads Department: No objections, subject to conditions.

Planning report: The proposed telecommunications development was considered acceptable in the context of the established telecommunications use on the site. An Appropriate Assessment (AA) screening report concluded that there would be no potential adverse effects on any Natura 2000 sites and that the submission of a Natura Impact Statement is not required. An Environmental Impact Assessment (EIA) screening report concluded that there would be no real likelihood of significant effects on the environment arising from the proposed development, and that the submission of an Environmental Impact Assessment Report (EIAR) is not required. A grant of permission was recommended subject to seven conditions, a number of which are set out in Section 3.1 above.

3.3 Prescribed Bodies

Not referred to prescribed bodies.

4.0 Planning History

I am not aware of any planning history pertaining to the appeal site.

5.0 Policy Context

5.1 Development Plan

The relevant Development Plan at the time of the Planning decision was the Kilkenny County Development Plan 2014-2020. This Plan has since been superseded by the Kilkenny Development Plan 2021-2027 which came into effect on the 15th day of October 2021. The following sections within the Plan are relevant to the development proposals.

Section 10.4 of the Kilkenny Development Plan is in relation to Telecommunications. Section 10.4.1.2 is in relation to Broadband and Section 10.4.1.4 is in relation to Telecommunications Antennae.

Specific objective 10K sets out the following: “To support and facilitate the delivery of high-capacity Information Communications Technology Infrastructure, broadband connectivity and digital broadcasting, throughout the County, in order to ensure economic competitiveness for the enterprise and commercial sectors and in enabling more flexible work practices e.g., remote working subject to other relevant policies and objectives of the Plan”.

5.2 Kilkenny County Council Development Contributions Scheme 2016-2017

5.2.1 Page 6 refers to Exemptions from the payment of Development Contributions.

The following categories of development will be exempted from the requirements to pay development contributions under the scheme:

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.

5.3 Circular PL03/2018 Revision of Development Contribution Guidelines

This circular letter, PL03/2018 was published by the Department of Housing Planning and Local Government on the 3rd day of July 2018 and sets out that waivers for broadband infrastructure shall be extended to include mobile phone infrastructure. The following is specifically set out “Where mobile or broadband operators demonstrate to the satisfaction of the Planning Authority that their infrastructure provides services to customers who would not otherwise be able to avail of an adequate mobile or broadband service, such infrastructure shall not attract development contributions. Furthermore, the waiver applies to masts, antennae, dishes and other apparatus, or equivalent being installed for such communications purposes”.

5.4 Natural Heritage Designations

None relevant.

6.0 The Appeal

6.1 Grounds of Appeal

6.1.1 The appeal is made by Towercom on behalf of the applicants Vodafone Ireland Ltd. The appeal was received by the Board on the 8th day of June of 2021. The grounds of appeal are as follows:

- The appeal refers to the Development Contribution Scheme (DCS) 2016-2017, adopted by Kilkenny County Council in 2016 and Circular letter PL03/2018 as published by the Department of Housing, Planning and Local Government in July 2018.
- The Local Authority has not updated its DCS to incorporate the provisions of Circular letter PL03/2018.
- The Broadband coverage mapping included within the ComReg website demonstrates the inadequacy of Vodafone’s current 4G wireless broadband coverage in the village of Ballyraggett.

- The proposals will allow for the provision of wireless broadband services to customers in Ballyraggett, who would not otherwise be able to avail of an adequate Vodafone and wireless broadband service throughout the town.
- The Kilkenny County Council Development Contributions Scheme (DCS) 2016-2017 is also misaligned with the recently published “Our Rural Future-Rural Development Policy” 2021, where Chapter 3 relates to optimising Digital Connectivity.
- We request the Board to remove condition number 2 of the planning decision in this instance.

6.2 Planning Authority Response

6.2.1 The Planning Authority responded to the Board on the 23rd of June 2021 as follows:

The Planning Authority advised that they had no further comment to make.

7.0 Assessment

7.1 Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied. Therefore, the Board, is restricted to considering the merits of condition number two only.

7.2 The current proposal pertains to the removal of a 15-metre-tall lattice telecommunications support structure and its replacement with a 20-metre lattice telecommunications support structure, antennae, dishes and support equipment within a security fencing and associated equipment.

7.3 Page 6 of the DCS permits certain exemptions and reductions. The Planning Authority has set out the following in relation to telecommunications infrastructure “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.

- 7.4 I note the claim by the applicant that the DCS has not been updated to incorporate the provisions of Planning Circular PL03/2018 in relation to waivers for the development of telecommunications infrastructure including masts, antennae and dishes. I am satisfied that this circular provides for waivers in respect of development of mobile phone infrastructure, including broadband services. Therefore, the proposals represent a subsequent or endorsed initiative as provided for in the exemptions for the payment of development contributions as provided for on Page 6 of the DCS.
- 7.5 I am satisfied based on the planning documentation submitted that the proposals would provide for a more robust and functional structure and would provide for improved wireless broadband services within the village of Ballyraggett. At present, the broadband service in Ballyraggett is deemed as being Fair as per the ComReg Broadband services mapping. The proposals will also enable other telecommunications providers to co-locate on the telecommunications structure, as permitted.
- 7.6 It is apparent from Circular letter PL03/2018, that the waiver from development contributions “applies to masts, antennae, dishes and other apparatus or equipment being installed for such communications purposes”. This Circular letter, published in July 2018 postdates the current Kilkenny DSCS. The Circular letter sets out that “local authorities are accordingly requested to update relevant references in their Development Contribution Schemes at the next available opportunity”.
- 7.7 Therefore, I am satisfied that taking account of the provisions of the Circular letter PL03/2018, the provisions of the exemptions provided for telecommunications infrastructure on Page 6 of the Kilkenny County Council DCS, that the upgrade of the telecommunications infrastructure on site, including the installation of a taller 20 metre lattice support structure, would entitle the applicant to avail of the exemption.
- 7.8 I would accept the point made by the applicants, that they are entitled to seek the exemption, as provided for within the scheme. I consider that the levy as proposed, is not warranted or justified and should be removed. I can conclude that the terms of the Kilkenny County Council Development Scheme nor the provisions of the

Planning Circular PL03/2018 have not been properly applied in this case, and that the appeal should be upheld.

8.0 Recommendation

It is recommended that the Planning Authority be directed to remove condition number 2, for the reasons and considerations hereunder.

9.0 Reasons and Considerations

Having regard to

(a) the general arrangements regarding payment of development contributions and implementation of the scheme.

(b) the extent of existing telecommunications developments on the site.

(c) the provisions of the Kilkenny County Development Contributions Scheme, specifically the exemptions provided for on Page 6.

(d) The provisions of Planning Circular letter PL03/2018.

Having regard to the nature of the existing and proposed telecommunications infrastructure proposals on the site, the lack of any material intensification of demand on existing infrastructure or requirement for new or upgraded infrastructure arising from the permitted use, and to the exemption provisions on Page 6 of the adopted Kilkenny County Council Development Contribution Scheme, 2016-2017, the provisions of Circular letter PL03/2018 in relation to waivers for the development of masts, antennae, dishes and other apparatus or equipment being installed for such communications purposes, that the financial contribution as set out under Condition 2 of planning reference number 20/563, is not justified. Therefore, it is considered that the provisions of the adopted development contributions scheme nor of Planning

circular letter PL03/2018 have not been properly applied such that Condition Number 2, attached to Planning Reference number 20/563 should be removed.

Fergal O'Bric
Planning Inspectorate

28th January 2022