



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310764-21

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<b>Development</b>	Retention of an existing telecommunications support structure & associated ground equipment within fenced compound
<b>Location</b>	Mill Lane, Ballindud, Tramore Road, Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	21327
<b>Applicant(s)</b>	Ontower Ireland Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	First Party-Vs- Section 48 Condition
<b>Appellant(s)</b>	Ontower Ireland Ltd
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> of September 2021.
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. The subject site of the telecommunications structure is within an industrial estate called the Mill Lane Complex in Ballindud, to the south of Waterford City.
- 1.2. It is located beyond the outer ring road of the city (R710) with access off a local road alongside the main Waterford-Tramore Road (Regional Road R675).

## 2.0 Development

The development is for retention of an existing telecommunications support structure (previously granted under Planning Reference No. 12500054) together with associated ground equipment within a fenced compound located at Mill Lane Complex.

## 3.0 Planning Authority Decision

### 3.1. Decision

Waterford City and County Council granted planning permission for the development on the 10<sup>th</sup> of June 2021 subject to 5No. conditions.

Condition No. 2 has been appealed to the Board.

*The developer shall pay to the planning authority a financial contribution of €10,000 (Ten Thousand Euro) In respect of public infrastructure and facilities benefitting in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000, as amended. The relevant Development Contribution Scheme was adopted by Waterford City and County Council on the 15<sup>th</sup> of February 2015. The contribution shall be paid within 3months of this grant of permission or in such phased payments as the planning authority may facilitate.*

*Reason: It is a requirement of the planning and development Act 2000, as amended, 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.*

<b>Telecommunications Mast</b>	<i>Rate/sqm</i>
Surface Water	€1500
Recreation/ Amenity	€500
Community Facility	€4000
Transport	€4000
Total	€10,000

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports*

The planning reference for the original permission for the structure is cited 12500054, and the report states that contributions are payable for masts where no development contributions were previously levied.

#### 3.2.2. *Other Technical Reports*

None

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

None

## 4.0 Planning History

4.1 Under Planning Registration Number 12500054 there was retention permission granted for five years for the telecommunications structure on the 26<sup>th</sup> of July 2012. Previously, the same structure had been granted planning permission for retention under planning references 01/338 and 07/500062 (according to the planning report

on file). I note from an online search planning reference 07500062 did not include a development contribution condition.

## 5.0 Policy Context

### 5.1. Development Plan

#### ***Waterford City Development Plan 2013-2019***

The subject site is zoned **Industrial** *for industrial, employment and related uses.*

Appended to this report is the **Waterford Development Contribution Scheme 2015-2021**.

According to the adopted scheme the contribution payable for Telecommunication Masts is €10,000.

***Exemptions'***, and it states *inter alia-*

*“Exemptions and reduced rates in the current schemes were reviewed and a number of additional exemptions and reductions are proposed having regard to the need to stimulate economic activity and also the Development Contribution Guidelines issued by the Department of the Environment, Community and Local Government.”*

*Non-Residential Exemptions (also refer to General Exemptions)*

*9) Broadband infrastructure (i.e. masts, dishes and antennae).*

### 5.2. Natural Heritage Designations

Not applicable.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Indigo has taken this first party appeal on behalf of Ontower Ireland Limited.

#### 6.1.1 ***Introduction***

The development has been designed to support 3G and 4G broadband communications for multiple operators, and the development will bring significant improvement to the provision of mobile and broadband data services to the area. The appeal solely relates to Condition No. 2 of the decision which requires the payment of a development contribution of €10,000.

6.1.2 According to the Development Contribution Scheme Section 7 (Exemptions) the following is relevant:

*Exemptions and reduced rates in the current schemes were reviewed and a number of additional exemptions and reductions are proposed having regard to the need to stimulate the economic activity and also the Development Contribution Guidelines issued by the DoECLG*

*9) Broadband Infrastructure (Masts, dishes and antennae).*

#### 6.1.3 ***The Development Contribution Guidelines 2013***

The Guidelines state planning authorities are to introduce waivers for broadband infrastructure to promote sustainable patterns and economic activity and securing investment in capital infrastructure. The development is accommodating national and local broadband providers with the intention of bringing mobile and broadband data services to Mill Lane Complex and the surrounding area.

In 2018, Circular PL03/2018 was issued to ensure a waiver for broadband and mobile phone infrastructure was implemented into the local authorities Development Contribution Schemes. The applicant is exempt from paying the development contribution as per the direction of Circular 03/2018.

#### 6.1.4 ***The National Broadband Scheme***

The applicant Ontower is proposing to deliver upon the Government's National Broadband Plan by installing the required infrastructure to facilities its provision and provide voice 3G/4G connectivity to the widest catchment, therefore does qualify under the Section 7 Exemptions of the Development Contributions Scheme.

#### 6.1.5 ***The National Broadband Plan***

The National Broadband Scheme has been replaced by the National Broadband Plan to provide for the EU Digital Agenda by 2020. In line with this rollout the Department of Environment considered the imposition of development contributions

as a barrier to the telecoms industry in delivery of the EU's Digital Agenda for Ireland. The granted development should benefit in full from the waiver, and no contributions are payable in line with exemption 7 and Circular PL03/2018.

#### 6.1.6 **Previous An Bord Pleanála Decisions**

ABP-248622 Kilkenny Co. Co. Ref. No. 17/161

The terms of the Development Contribution Scheme had not been properly applied.

ABP- 302609 Tipperary Co. Co. reference 18600549

The terms of the Development Contribution Scheme had not been properly applied.

The cases cited are similar to the current proposal, the applicant anticipates the Board will direct Waterford City and County Council to remove condition No. 2.

#### 6.2. **Planning Authority Response**

There is nothing further to add on appeal.

#### 7.0 **Assessment**

- 7.1 The effect of section 48(10)(c) of the *Planning and Development Act 2000*, as amended, is to restrict the Board to consideration of the condition appealed, and the Board cannot look at the case *de novo*.
- 7.2 The issue of this appeal relates to Condition No. 2 of the decision to grant planning permission for retention of the telecommunications structure at Ballindud, on the outskirts of Waterford City, and the implementation of the Waterford City and County Council Development Contribution Scheme 2015-2021. According to Section 6 of the Scheme, contributions are payable in respect of a series of non-residential developments, amongst which, is telecommunications masts at a rate of €10,000/structure, which was imposed by the planning authority in Condition No. 2 of the decision.
- 7.3. Section 7 of the adopted Development Contributions Scheme deals with 'Exemptions', and it states *inter alia*-

*Non-Residential Exemptions (also refer to General Exemptions)*

*9) Broadband infrastructure (i.e. masts, dishes and antennae).*

- 7.4. The appellant notes that the proposed development constitutes equipment for voice and 3G/4G connectivity for broadband data services. Accordingly, this forms part of the National Broadband Plan, as defined by the Department of Communication, Energy and Natural Resources. The appellant further notes that the Development Contribution Guidelines for Planning Authorities (2013), require that planning authorities include waivers for broadband infrastructure (mast and antennae). The appellant further notes in accordance with Circular 03/2018 from the Department of Housing, Planning and Local Government, the 2013 Guidelines also include waivers for both mobile phone and broadband infrastructure. The local authorities are required to update their Development Contribution Schemes accordingly.
- 7.5. The National Broadband Plan (formerly identified as National Broadband Scheme) aims to improve broadband availability nationwide, through a combination of commercial and state-led investment. I would be satisfied that the appellant's company, Ontower Ireland Limited, is providing equipment that would constitute equipment for communication purposes that forms part of the National Broadband Plan, as defined by the Department of Communication, Energy and Natural Resources. In this instance, the Development Contribution Scheme clearly provides for an exemption under Section 7, for broadband infrastructure which forms part of the National Broadband Plan. The Planning Authority has not justified the failure to apply the exemption allowed for in the Scheme. I would consider that the Planning Authority failed to correctly apply the terms and conditions of the Development Contribution Scheme in this instance.
- 7.6 The planning report in the application file, justified imposing a development contribution on the development because it had not been levied under previous planning applications associated with the subject structure. I note there was no development contribution imposed on 2No. previous planning applications associated with the communications structure, Planning Reference No.s 07500062 (2007) and 12500054 (2012). It is unreasonable for the planning authority to impose a development contribution at this stage when the structure was originally permitted on the site in 2001 (planning reference 01/338), and subsequently the subject of two

additional retention planning applications. I consider the imposition of a development contribution condition on the fourth planning application for retention of the structure to be inconsistent and unreasonable, particularly having regard to the roll out of the National Broadband Plan, and the introduction of waivers to Development Contributions Scheme in 2013 and 2018 to facilitate the rollout and service providers of broadband infrastructure.

## 8.0 Recommendation

8.1. I recommend the planning authority be directed to remove Condition No. 2.

## 9.0 Reasons and Considerations

Having regard to:

(a) the provisions of the Waterford County Development Contribution Scheme 2015-2021, which states- "Broadband infrastructure (i.e. masts, dishes and antennae) will be exempt from development contributions", and

(b) the submission made in the appeal,

it is considered that the proposed development constitutes a facility for communications purposes that forms 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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Caryn Coogan  
Planning Inspector

9<sup>th</sup> of November 2021