



An
Bord
Pleanála

Inspector's Report ABP-312334-21

Development	Construction of telecommunication support structure and all associated site works
Location	Cloghala, Dungarvan, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21855
Applicant(s)	Tower Ireland Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party v's Financial Contribution
Appellant(s)	Tower Ireland Ltd.
Observer(s)	None.
Date of Site Inspection	N/A.
Inspector	Stephanie Farrington

1.0 Site Location and Description

- 1.1. The appeal, which has a stated area of 0.0149ha, is located at Cloghala, Dungarvan, Co. Kilkenny. The site is located within the southern portion of an agricultural field. Access is provided via the local road L2634.

2.0 Proposed Development

- 2.1. The proposal comprises the construction of a new 24m telecommunications support structure to hold 6 no. antennas, 9 no. remote radio units and 2 no. 600mm dishes. The proposed operator is Three and the proposal seeks to provide 3G and 4G broadband services.
- 2.2. The application is accompanied by the following documentation:
- Technical Justification Report
 - Planning Statement
 - Photomontage Report

3.0 Planning Authority Decision

3.1. Decision

Kilkenny County Council issued a notification of decision to grant permission for the development subject to 10 no. conditions.

Condition no. 2 is the subject matter of this appeal. This outlines that:

“The Developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting 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 2000-2015.

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 (ten thousand euro), however this amount may be recalculated in accordance with any newly adopted Development Contribution Scheme that may supersede 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 2000-2015 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.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report recommends a grant of permission subject to conditions. The following main points are raised:

- In terms of visual impact, the site is set back within a larger agricultural field. There are no impacts on any protected views within the area.
- It is considered that the proposed development would not seriously injure the amenities of the area.
- Development Contribution: Class 15 applies.

3.2.2. Other Technical Reports

- Roads – No objection
- Environment – No objection subject to condition.

3.3. Prescribed Bodies

- IAA – No objection.

3.4. Third Party Observations

None.

4.0 Planning History

None.

5.0 Policy Context

5.1. Development Plan

Kilkenny City and County Development Plan 2021-2027

Telecommunications

Section 10.4 relates to Telecommunications.

10.4.1.4 Telecommunications Antennae

The Council recognises the importance of a high-quality telecommunications service and will seek to achieve a balance between facilitating the provision of telecommunications services in the interests of social and economic progress and sustaining residential amenities and environmental quality.

The following objectives are of relevance:

- Objectives 10I: 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.
- Objective 10J: To set up and maintain a register of approved telecommunications structures which will provide a useful input to the assessment of future telecommunications developments and would also be useful from the point of view of maximising the potential for future mast sharing and co-location.

Telecommunications Antennae Development Management Requirements:

When considering proposals for telecommunications masts, antennae and ancillary equipment, it is the policy of the Council to have regard to the following:

- (a) the visual impact of the proposed equipment and access infrastructure on the natural or built environment, particularly in areas of heritage value (See Chapter 9 Heritage);
- (b) the potential for co-location of equipment on existing masts; and
- (c) Telecommunications Antennae and Support Structures - Guidelines for Planning Authorities and Circular Letter PL 07/12.

The Council will discourage proposals for telecommunications masts, antennae and ancillary equipment in the following locations, save in exceptional circumstances where it can be established that there would be no negative impact on the surrounding area and that no other location can be identified which would provide adequate telecommunication cover:

- i. Highly scenic areas or areas specified as such in the landscape character assessment, such as Mount Brandon and the River Valleys or the areas identified in Section 9.3.1.1 Archaeological Landscapes; in such cases the developer shall demonstrate an overriding technical need for the equipment which cannot be met by sharing of existing authorised equipment in the areas and the equipment is of a scale and is sited, designed and landscaped in a manner which minimises adverse visual impacts.
- ii. In close proximity to schools, churches, crèches, community buildings, other public and amenity/conservation areas; and,
- iii. In close proximity to residential areas.

In the assessment of individual proposals, the Council will also take the impact on rights of way and walking routes into account. To avoid proliferation of structures, which could be injurious to visual amenities, it is the Council's preferred approach that all support structures will meet the co-location clustering policy of the current guidelines for antennae. The Council will require documentary evidence as to the non-availability of this option in proposals for new structures. The shared use of existing structures will be required where the numbers of masts located in any single area is considered to have an excessive concentration.

Proposals within the county for telecommunications antennae and support structures must show:

- (a) the alternative sites considered and why the alternatives were unsuitable,
- (b) the number of existing masts within the County,
- (c) the long-term plans of the developer in the County and the potential for further masts,
- (d) and the plans of other promoters and any prior consultations which the developer may have had with other mast owners.
- (e) all technology shall comply with the strictest environmental quality requirements, including the latest International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines and mitigate adequately against the potential to impact negatively on human health and wellbeing.

5.2. Kilkenny County Development Contribution Scheme 2016-2017

The development contribution scheme outlines that the following contributions are payable with regard to telecommunication masts (page 4).

Section	Description of Development	Unit	Rate of Charge
15.	Communication Masts	Per Mast	€10,000.00

Exemptions from the payment of Development Contributions indicates ‘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.’ (page 6).

5.3. Telecommunications Antennae and Support Structures Guidelines for Planning Authorities, 1996 and Circular Letter PL07/12

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

In addition, Circular Letter PL 11/20 has been referred to in the grounds of appeal. 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.

5.4. *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).

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal was submitted in respect of Condition no.2 of Kilkenny County Council's notification of decision to grant permission for the proposed development. The following provides a summary of the grounds of appeal:

- This is an appeal in relation to the development contribution of €10,000 imposed under Condition no.2 only.
- It is stated that the terms of the Kilkenny County Council Development Contribution Scheme have not been properly applied. It is requested that Condition no. 2 should be removed.
- The appeal sets out an outline of the site location, a description of the proposed development and overview of the policy context and technical justification for the proposal.
- The proposed development is broadband infrastructure for Three Ireland to provide for 3G broadband and data services and 4G high speed broadband and data services for the local community.
- The appeal refers to the guidance set out within Chapter 2 of the Development Contribution Guidelines for Planning Authorities which outlines that Planning Authorities are required to include waivers for broadband infrastructure (masts and antennae).
- The proposal seeks to provide wireless broadband and data services in a rural area which currently has a broadband deficit.

- The Planning Authority have not had regard to the guidance set out within Circular letter PL07/12 which states 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”*.
- The exemptions contained within the development contribution scheme (page 6) are applicable to the proposed development. The proposed development constitutes “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.
- The National Broadband Plan and the report of the Mobile Phone and Broadband Taskforce is the “subsequent endorsed initiative” as per the exemptions in the Development Contribution Scheme. No contribution should be payable for the proposed communications infrastructure.
- The appeal refers to An Bord Pleanala decision issued under PL10.248622 which outlines that the terms of the Kilkenny County Development Contribution Scheme were not properly applied. It is stated that similar considerations apply to the proposal.
- It is requested that Condition no. 2 is removed from the decision to grant permission.

6.2. Planning Authority Response

Kilkenny County Council provided the following response to the grounds of appeal:

- The applicant did not link any details to the National Broadband Scheme in their application.
- The appeal response attaches a copy of the calculation sheet and the planning authority’s Development Contribution Scheme. The Development Contributions Calculation Report (15.10.2021) identifies the proposal within Class 15 “Communication Mast”. A levy of €10,000 is detailed.

6.3. Further Responses

Correspondence was received from Entrust Planning and Environmental on behalf of the applicant in February 2022.

- The response quotes Section 6.31 to 6.33 and Section 6.34 of the Planning Statement submitted in support of the application which refers to the Report of the Mobile and Broadband Taskforce and Action Plan for Rural Development.
- A summary of the grounds of appeal is provided. It is requested that Condition no. 2 of the planning authority's decision is removed.

7.0 Assessment

7.1. This First Party Appeal is solely against Condition no. 2 of the Council's permission relative to development contributions. Therefore, the application is not considered 'de novo' and issue in question in this case is solely whether the Council's Development Contribution Scheme has been properly applied.

7.2. Condition no. 2 of Kilkenny County Council's notification of decision to grant permission for the proposed development relates to a development contribution of €10,000 under the Council's Section 48 Development Contribution Scheme. The following basis of calculation is set out within the report:

- Class 15: Communication Mast

7.3. The proposal relates to the construction of a 24m telecommunications mast carrying antennas, dishes, associated equipment and cabinets. The following exemption as set out within the Kilkenny County Development Contribution Scheme 2016-2017 is of relevance:

'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'.

7.4. The grounds of appeal outlines that the proposed development constitutes equipment for communication purposes that forms part of the National Broadband Plan and the Report of Mobile Phone Taskforce and is the 'subsequent endorsed initiative defined by the Department of Communication, Energy and Natural

Resources' as per the exemptions and that no contribution should be payable for the proposed communication infrastructure.

- 7.5. Kilkenny County Council's response to the grounds of appeal outlines that the applicant did not link any details to the National Broadband Scheme in their application. In this regard I refer to Section 6.33 of the planning statement submitted in support of the application which outlines that the taskforce plan envisages an expansion of fixed line investment through commercial investment and *"the proposed development represents industry investment in response to increased demand for improved, and additional communications services in Ireland"*.
- 7.6. The technical justification for the proposal as set out within the planning statement submitted in support of the application outlines that the proposal seeks to enhance coverage provided by Three Ireland to improve the quality of services provided to Dungarvan and environs. The applicant is On Tower Ireland Limited and planning statement details that the "Three Ireland" telecommunications site portfolio was purchased by Cellnex Ireland Limited in late 2020, under its wholly owned subsidiary, namely On Tower Ireland Limited and the proposed development seeks to provide local high speed data and broadband services for Three Ireland.
- 7.7. I note that the National Broadband Plan aims to change the broadband landscape in Ireland through a combination of commercial and State led investment, and that the purpose of Report of the Mobile Phone and Broadband Taskforce is to deliver the National Broadband Plan in the shortest time possible time. I consider that the National Broadband Plan and the Report of the Mobile Phone and Broadband Taskforce can be considered to be the 'subsequent endorsed initiative as defined by the Department of Communication, Energy and Natural Resources' as per the exemptions in the development contribution scheme. In my opinion the details provided are sufficient to support this case and meet the requirements of the exemption.
- 7.8. The appeal furthermore includes reference to the Development Contributions Guidelines for Planning Authorities and the requirement for planning authorities to include waivers for broadband infrastructure (masts and antennae). The applicant outlines that the proposal constitutes commercial private investment in capital infrastructure and economic activity as proposed in the actions of the taskforce

report and outlined in the guidelines. The appeal refers to the decision of An Bord Pleanála under ABP Ref: PL10.248622 in November 2017 wherein a similar condition was imposed by the Kilkenny County Council and subsequently removed by the Board. It is my view that similar considerations apply in the instance of the current proposal.

- 7.9. Having regard to the information submitted in conjunction with the application and appeal I consider that the proposal falls within the exemptions as set out within the Development Contribution Scheme. I consider that the provisions of the Kilkenny County Council Development Contribution Scheme 2016-2017 have been incorrectly applied by Kilkenny County Council in this instance and I recommend the removal of Condition no. 2.

8.0 Recommendation

- 8.1. I recommend that Kilkenny County Council be directed to REMOVE Condition No. 2 on the grounds that the terms of the Development Contribution Scheme 2016-2017 have not been properly applied.

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 subsequent endorsed initiative as defined by the Department of Communication, Energy and Natural Resources; and

(b) The information submitted in conjunction with the application and 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.

Stephanie Farrington
Senior Planning Inspector

20th of September 2022