



An  
Bord  
Pleanála

## Inspector's Report ABP315347-22

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<b>Development</b>	24 metres telecommunications lattice support structure
<b>Location</b>	Loughboy Industrial Estate, Kilkenny City
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	P22-629
<b>Applicant(s)</b>	On Tower Ireland Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	First Party v Section 48 Condition
<b>Appellant(s)</b>	On Tower Ireland Ltd.
<b>Observer(s)</b>	none
<b>Date of Site Inspection</b>	19 <sup>th</sup> April 2023
<b>Inspector</b>	Brendan McGrath

## 1.0 **Site Location and Description**

The site is on an industrial estate on the outskirts of Kilkenny

## 2.0 **Proposed Development**

The proposed development is a 24m high lattice-type telecommunications mast

## 3.0 **Planning Authority Decision**

Grant permission subject to 9 conditions. Condition number 2 requires payment of a contribution of €10,000 in accordance with the Kilkenny County Council Development Contribution Scheme under Section 48 of the Planning and Development Acts

### 3.1. **Planning Authority Reports**

#### 3.1.1. Planning Reports

The planning report is the basis of the decision. The report recommends a development contribution in accordance with the Development Contribution Scheme

#### 3.1.2. Other Technical Reports

None

## 4.0 **Planning History**

None relevant

## 5.0 **Policy and Context**

National policy is contained in Telecommunications Antenna and Support Structures – Guidelines for Planning Authorities , 1996. This was revised by DoEHLG Circular Letter PL07/12 in 2012 which required, in order to facilitate the rollout of broadband, that local planning authority Development Contribution Schemes include waivers for broadband infrastructure provision. That waiver was further expanded by 2018

guidance to cover ‘any telecommunications infrastructure both mobile and broadband .....’ (Circular PL03/2018)

## 6.0 The Appeal

The applicant asserts that the planning authority has not had due regard to Circular Letter PL 07/12, which requires that ‘all future Development Contribution Schemes must include waivers for broadband infrastructure for broadband infrastructure’. The Kilkenny County Council Development Contribution Scheme includes such a waiver. Therefore, Condition 2 of the grant of permission, requiring a contribution of €10,000, is not in accordance with the adopted scheme.

### 6.1. Planning Authority Response

The planning authority has responded by stating that it has applied its Development Contribution Scheme correctly. The charge was calculated under category 15-communication masts with the charge set at €10,000 per mast.

The scheme does contain an exemption for *‘Masts and antennae 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.’*

However, the authority asserts that the qualification in the last sentence applies to this proposal.

The planning authority also makes a point of the fact that the applicant is a private company building new telecoms infrastructure which will have a commercial value.

The planning authority has therefore decided that this proposal constitutes a ‘new building’ to be charged at the commercial rate of €10,000

## 7.0 Assessment

Having examined the application and appeal documentation on file, I consider that the substantive issue is the one raised by the appellant and which has been addressed in the response from the planning authority. In my opinion there is no

merit in the planning authority's argument for not applying the required exemption on the basis that the proposal constitutes a 'new building', as cited as an exception in the Development Contribution Scheme and that Tower Ireland, the developer, is a private commercial company.

## **8.0 Recommendation**

I recommend the removal of the second condition of the grant of permission which, in my opinion, is an incorrect application of the Kilkenny County Council Development Contribution Scheme made under Section 48 of the Planning and Development Acts 2000 -2021.

## **9.0 Reasons and Considerations**

Having regard to the adopted Kilkenny County Council Development Contribution Scheme, an exemption from the payment of a development contribution applies in respect of '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,' Condition Number 2 of the grant of permission should therefore be omitted from the decision to grant permission

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Brendan McGrath  
Planning Inspector

3<sup>rd</sup> May 2023