



An  
Bord  
Pleanála

## Inspector's Report ABP-316253-23

<b>Development</b>	Section 254 Licence to Place and Maintain Telecommunications Infrastructure
<b>Location</b>	Grass verge along R698, Piltown, Co. Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority Reg. Ref.</b>	S.254/152
<b>Applicant(s)</b>	Signal Infrastructure Limited.
<b>Type of Application</b>	Section 254 Licence.
<b>Planning Authority Decision</b>	Grant License.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Board of Management, Piltown National School. Lisa Mullin.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	30-11-2023.
<b>Inspector</b>	Adam Kearney.

## **1.0 Site Location and Description**

- 1.1. This is a small roadside site is in the Townland of Kildalton on the northwestern fringe of Piltown, Co. Kilkenny. It is located on a grass verge bounding a regional designated road near the junction with Hilcrest Avenue. The site currently consists of a small area of concrete hardstanding with a telecommunications cabinet (circa 1.65m high, 1.9m wide and 0.8m deep). The monopole component has not been erected on the site as of the time of my visit. It is noted that there is graffiti on the concrete hardstanding associated with the telecommunications infrastructure. The site of the monopole and cabinet is circa 180m northwest of Piltown National School and circa 70m southeast of the nearest residence at Kildalton Close.

## **2.0 Proposed Development**

Place and Maintain Telecommunications Infrastructure. Application relates to a cabinet and 18m monopole

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Recommend that a license be issued for 12 months from November 2022 subject to 10 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- The planning report noted the planning history with regard to the S254 applications at the site and in the immediate vicinity.
- Noted the principle of development was acceptable under License S254/106
- A Natura 2000 screening exercise was completed showing no significant impact likely.

- Preliminary Examination of the nature, size and location of the proposed development carried out, and no real likelihood of significant effects on the environment arising, and therefore concluded that an EIAR is not required
- No objection to renewal of the License

### 3.2.2. Other Technical Reports

- Area Engineer: No Objection

## 4.0 Planning History

### 4.1. Subject Site

- S254/106 License Granted to Cignal Infrastructure to *Place and Maintain Telecommunications Infrastructure* at Grass Verge along R698, Piltown, Co. Kilkenny on 4/11/21

### 4.2. Vicinity

- S254/86 Refused 4/8/21 due to being in conflict with a number of LA schemes being progressed for footpath, pedestrian crossing and possible cycle lane.

## 5.0 Policy and Context

### 5.1. National Planning Framework –

Project Ireland 2040

This is broadly supportive of the national rollout of broadband communications.

National Policy Objective 24: *Support and facilitate delivery of the National Broadband Plan as a means of developing further opportunities for enterprise employment, education, innovation and skills development for those who live and work in rural areas.*

## 5.2. **Regional, Spatial and Economic Strategy for the Southern Region (RESES)**

The RESES seeks to improve high-quality telecommunications infrastructure across the region. Policies are broadly supportive and support the roll out of mobile and broadband infrastructure and include:

**RPO137:** It is an objective to strengthen the continued delivery of high-speed, high-capacity digital and mobile infrastructure investment in our Region and strengthen cross regional integration of digital infrastructures and sharing of networks.

## 5.3. **National Broadband Plan 2020:**

The National Broadband Plan (NBP) is the Government's initiative to improve digital connectivity by delivering high speed broadband services to all premises in Ireland, through investment by commercial enterprises coupled with intervention by the State in those parts of the country where private companies have no plans to invest.

## 5.4. **Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (as updated by Circular Letters PL07/2012 and PL 11/2020 respectively)**

Published by the Department of the Environment and Local Government in July 1996 (as updated by Circular Letters PL07/2012 and PL 11/2020 respectively) which recognises that it may be necessary to locate such infrastructure in towns and villages and advises that existing utility sites should be considered along with site specific design,

- Section 4.3 of the Guidelines refers to visual impact and notes that only as a last resort, and if the alternatives are either unavailable or unsuitable, should free-standing masts be located in residential areas or beside schools. If such locations should become necessary, sites already developed for utilities should be considered, and masts and antennae should be designed and adapted for the specific location. It also notes that the proposed structure should be kept to the minimum height consistent with effective operation and should be monopole rather than a latticed structure.

- Section 4.5 of the Guidelines states the sharing of antennae support structures will normally reduce the visual impact on the landscape and places an onus on the operators to demonstrate that they have made a reasonable effort to share. It notes that where it is not possible to share a support structure, the sharing of sites or adjacent sites should be encouraged so that masts and antennae may be clustered. It states that the use of the same structure or building by competing operators in urban or suburban areas will almost always improve the situation.
- Section 4.6 of the Guidelines notes that ground-mounted single poles do not generally require fencing off the site or anti-climbing devices etc. It also states that it is unlikely that accessing the site will give rise to traffic hazards as maintenance visits should not be more than quarterly. During the construction period, depending on the location of the site, special precautions may have to be taken in relation to traffic.

#### **5.5. Circular Letter PL 07/12 (DECLG, October 2012)**

Revised elements of the Telecoms Guidelines.

- Section 2.2 advises that only in exceptional circumstances, where particular site or environmental conditions apply, should a permission issue with conditions limiting its life.
- Section 2.3 advises that planning authorities should avoid including minimum separation distances between masts or schools and houses in their Development Plans.
- Section 2.4 advises that future permissions should simply include a condition stating that when the structure is no longer required it should be demolished, removed and the site re-instated at the operators' expense, as opposed to conditioning a security bond in respect of removal.
- Section 2.6 reiterates the advice planning authorities should not include monitoring arrangements as part of planning conditions nor determine planning applications on health grounds. These are regulated by other codes and such matters should not be additionally regulated by the planning process.

#### **5.6. Circular Letter PL 11/2020 (DHLGH, December 2020)**

Reminds Planning Authorities that whilst a S.254 licence is required for works specified in S.254(1) of the Planning and Development Act 2000 (as amended), including overground electronic communications infrastructure, any development carried out in accordance with a licence shall be exempted development for the purposes of the Act under s. 254(7). The Circular also notes that exemptions for telecoms infrastructure along public roads do not apply where the proposed development is in a sensitive area where there is a requirement for Appropriate Assessment; or where the proposal would endanger public safety by reason of traffic hazard or obstruction of road users.

#### **5.7. Development Plan**

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 10(l) 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”.

### **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.

### **5.8. Natural Heritage Designations**

The subject site is not located within any designated area. The closest Natura 2000 site is approximately 2.5 km southwest of the site, being the Lower River Suir SAC, (Site Code 002137).

## 5.9. EIA Screening

Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Appeal: **Lisa Mullin**

- Planning Authority were to consider proximity to school pursuant to 1996 Guidelines, Section 255 of the Act and Kilkenny CDP 2021 – 2027
- Mast 85m from school and 30m from nearest dwelling
- Works were not undertaken as part of the original License
- The current application submitted under a new County Development Plan
- Appeal cites policy contained in the new development plan around visual impact, potential for co-location, proximity to schools and residential areas and how proposals for telecommunication should justify their proposals.
- Applicants are seeking a 'backhaul' connection to the School Broadband Connection Point
- Continuation license does not exist under Section 254
- Teagasc is the owner of the land and there was no consent given to the applicant.
- No proper screening for Appropriate Assessment
- No EIA Screening
- No mobile blackspot and so no requirement for 18m 'smartpole'
- Inappropriate use of Section 254 Street Furniture Licensing for radiation emitting masts
- Health considerations require a minimum separation from schools.

- Cites research which determines a 500m separation from schools.
- There is a visual impact at this rural setting proximate to the grounds of a historic house.
- A vote by 'County Board' is required for permanent telecommunications infrastructure.

Appeal: **Board of Management (Piltown N.S.)**

- No letter of Consent from Teagasc who own the lands.
- S254 only provides for continued placement, maintenance, and use of overground telecommunications infrastructure. In this case the applicant had not carried out any works under S254/106 and therefore could not seek a continuation.
- License S254/106 expired before S254/152 was granted.
- Planner did not have regard to the 2021 – 2027 CDP and the original License was determined under the previous plan.
- New CDP requires applicants to show long term plans and the potential for future masts.
- No rationale given for location beside large national school.
- Applicants need to demonstrate that proposal complies with environmental quality requirements including the latest International Commission on Non-Ionizing Radiation Protection (ICNIRP)
- Had the license been submitted and assessed in accordance with the 2021 – 2027 CDP then the PA should have determined a material contravention.
- No material was supplied to the PA to support the screening for Appropriate Assessment of the proposed development. Planning Authority has no jurisdiction to carry out screening.
- No EIA screening carried out and could not have been carried out as there was no application details to screen.
- Applicant did not sign and date the application.

## 6.2. Applicant Response

Appeal Response 3<sup>rd</sup> May 2023

- Initial License was for a short period of 12 months which was insufficient to carry out the totality of the works.
- Periods in other jurisdictions range from 3 – 5 years.
- There were no plans or other information supplied because there was no material alteration over and above the original License Application S.254/106 which the Local Authority had available.
- Planner would have been aware of the new county plan in their deliberations.
- Assumes the planner did not identify any new objective/policy that would alter the original decision.
- Comreg maps show the Piltown outdoor coverage as 'fair' to 'fringe' with an assumption that the indoor coverage is then 'fringe' to 'no coverage'
- Map classifies 'Eir' and 'Three' as 'Fair' and 'Vodafone' as 'good'
- Maps in the appeal are misleading as they show 2G maps for 'Eir' and 'Three'
- Comreg maps did not show any infrastructure at Kildalton school in 2021
- Planners report page 10 for S254/106 shows these towers as 'Dense Air Ireland' which is a closed/semi private network.
- The rationale for locating close to school and housing is to cover an identified blackspot and to improve overall coverage in the village.
- The subject site will be built in accordance with current Health and Safety legislation and Guidelines which is *ultra vires* to the planning process.
- Re Appropriate Assessment Screening, the applicants original planning report had regard to the nature and limited scale of the proposal and notes the absence of pathways to nearest Natura 2000 Site (Lower River Suir SAC 0.5km).
- EIA not necessary for a street pole.

### 6.3. Planning Authority Response

- Replied stating 'No Further Comment'

### 6.4. Observations

None

### 6.5. Further Responses

Further Response by applicant by email subsequent to 2<sup>nd</sup> appeal 25/07/23

- Original response covers much of the content in the 2<sup>nd</sup> appeal
- Proposed Infrastructure is a multi operator 4G solution and not a 5G Solution.
- The applicant will not utilise the Broadband Connection Point Located at Piltown N.S. as a 'Backhaul' source as suggested.
- The applicant will use one of the operators existing poles via a transmission dish mounted on the pole as a 'backhaul'.

## 7.0 Assessment

7.1. The planning issues central to the determination of a decision having regard to the appeal are considered below under the following subheadings.

- Principle of development
- Justification for proposed installation
- Visual Impact
- Procedural concerns around the License application
- Appropriate Assessment Screening

### 7.2. Principle of Development

The National Planning framework sets out the need to support and facilitate delivery of the National Broadband Plan being a '*strategy as a means of developing further opportunities for enterprise employment, education, innovation and skills development for those who live and work in rural areas*' (OBJ 24) and to develop a

*stable, innovative and secure digital communications and services infrastructure on an all-island basis (OBJ 48).*

The general thrust of the NPF is echoed at a regional level (RSES) under RPO137 where it is a stated objective *‘to strengthen the continued delivery of high-speed, high-capacity digital and mobile infrastructure investment in our Region and strengthen cross regional integration of digital infrastructures and sharing of networks’*

The subject telecommunications proposal is a project supported by the NPF and Regional Guidelines and also conforms with Ministerial Guidelines which were published in 1996 and expanded under Ministerial Circular Letter PL07/12 which recognises that it may be necessary to locate such infrastructure in towns and villages and advises that existing utility sites should be considered along with site specific design.

There is also an endorsement of co-location and albeit the subject proposal is for new standalone infrastructure the applicants have made it known that the equipment can accommodate more than one provider and that an option for other operators using the equipment exists.

In terms of the Kilkenny County Development Plan 2021 – 2027 the Local Authority again sets out its support for infrastructure deployment in line with National and Regional policies and sets down development management guidance that adheres to the S28 guidance and subsequent Circular Letter PL 07/12.

Having regard to the relevant policy and the County Development Plan I am satisfied that the location and operation of telecommunications infrastructure at this location is in compliance with the policy and objectives as set out.

### **7.3. Justification for proposed installation**

The application submission includes details of 3 no. sites at which co-location was deemed unsuitable for the needs of the search ring for the local network due to the distances removed, which are between 4.7 km and 5.8 km.

Alternative sites to the one proposed within the search ring for the installation were illustrated and discounted due to issues around sightlines, tree coverage and insufficient room available at one location.

The appeal notes the existence of telecommunications equipment at Kildalton college circa 800m east of the subject site. The planning consultant for the applicant states that this infrastructure was not evident in 2021 and that the network is private/semi private and operated by 'Dense Air' I am not able to establish what the status of the telecommunications equipment within the Kildalton college is and can find no permissions for telecommunications at this location on the Kilkenny County Council Eplan system.

I note that 'Dense Air' on their web presence seek to develop 'neutral networks' and I presume this may entail offering services to established operators. However, I also note that Kildalton Agricultural College is an expansive property extending to c.150 Hectares and with 1,400 students attending. As a result, the telecommunications equipment at the college may well be exclusive to the wireless network operation of the campus.

Irrespective of the foregoing the college is greater than the stated 500m radius as employed by the applicant in their justification appraisal, and from my own analysis of the Comreg coverage viewer I note that the coverage for 4G west of the proposed site in the urban area is predominantly illustrated as 'Fair' for 2 out of the 3 mobile operators.

In light of the information available it is considered that the applicant has made a satisfactory case in regard to its requirements within the local network to justify favourable consideration of an installation at the subject site location.

#### **7.4. Visual Impact**

The applicants have offered 9 no. viewpoints (VP's) confined to a 150m radius of the site as it is stated that outside of this envelope there is no discernible evidence of the infrastructure due to distance and the slim line nature of the monopole.

Having visited the area and appraised the photomontages associated with the application I am satisfied that the monopole proposed, due to its height, slender diameter and material composition can be considered a benign intervention not

dissimilar to other urban street furniture like street lamp standards, albeit the height of the monopole exceeds standard street poles which are usually less than 12m.

#### **7.5. Procedural Concerns Around the License Application**

Both appeals point to the validity of the License and that the application did not contain any supporting drawings or details and that the application form was not signed.

The Section 254 process is in essence a closed process for the purposes of an application, and public notices, or consultation periods are not required. Appeals are allowed any time after the issue of a license.

Section 254 (3) of the Act states:

*‘A person applying for a licence under this section shall furnish to the planning authority such plans and other information concerning the position, design and capacity of the appliance, apparatus or structure as the authority may require.’*

The applicants submitted a license application in November 2021 (S.254/106). The license was granted but the timeframe offered was 12 months which, in real terms is a short, atypical period for a S.254 Telecommunication application.

The applicant was then forced to reapply prior to the initial license expiring and the subsequent (subject application) was granted. The proposal did not change in the interim and the applicant and the Planning Authority were apparently satisfied that the information from S254/106 remained relevant and sufficient and the License application S.254/152 was treated as a continuation of S.254/106.

The Local Authority as the competent Authority deliberates on license applications and so decide on the format and content of an application they may require as per section S.254(3).

I am satisfied that the Planning Authority understood what the applicant was applying for and were satisfied from the outset that the application referenced the content of the prior license at the same location for the same development and that they had sufficient information to hand to make an informed decision on a continuation of the license that was granted 10 months previous.

## 7.6. **Appropriate Assessment Screening**

Having regard to the nature and scale of the development proposed and the absence of any direct or indirect pathway between the appeal site and any European site and the separation distances to the nearest European site no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 **Recommendation**

I recommend that the decision of the Planning Authority is upheld and a S.254 Licence is GRANTED subject to conditions, for the reasons and considerations as set out below

## 9.0 **Reasons and Considerations**

- 9.1. Having regard to the provisions of section 254 of the Planning & Development Act, 2000 (as amended), to the relevant provisions of the Kilkenny County Development Plan 2021-2027, and the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (1996) as updated by Circular Letters PL 07/12 and PL 11/2020, it is considered that, subject to compliance with the conditions set out below, the proposed development would be consistent with the relevant provisions of the development plan, would not be seriously injurious to the amenities of the area, or residential amenity in the vicinity, would not interfere with the convenience and safety of pedestrian and road traffic and would, otherwise, be in accordance with the proper planning and sustainable development of the area.

## 10.0 **Conditions**

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning
----	---

	<p>authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The licence shall be valid for a period of <b>5 years</b> from the date of this Order. The telecommunications structure and related ancillary structures including any access arrangements shall then be removed and the site lands shall be reinstated on removal of the telecommunications structure and ancillary structures unless, prior to the end of the period, a further Section 254 licence has been granted for their retention for a further period.</p> <p><b>Reason:</b> To enable the impact of the development to be re-assessed, having regard to changes in technology and design during the specified period.</p>
3.	<p>Where it transpires the location of the cabinet, monopole and associated infrastructure conflicts with the Planning Authority's plans for the area and that the land is required by the Planning Authority in the performance of its statutory functions. The cabinet, monopole and associated infrastructure shall be removed on request.</p> <p><b>Reason:</b> In the interests of orderly development</p>
4.	<p>Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.</p> <p><b>Reason:</b> In the interest of public health and to prevent flooding.</p>
5.	<p>No advertisement or advertisement structure shall be erected or displayed on the proposed structure or within the curtilage of the site without a prior grant of planning permission.</p> <p><b>Reason:</b> In the interest of the visual amenities of the area.</p>
6.	<p>The proposed cabinet, pole and hardstanding area shall be maintained regularly and shall be kept graffiti free.</p> <p><b>Reason:</b> In the interests of visual amenity of the area.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

---

Adam Kearney

Planning Inspector

13<sup>th</sup> December 2023