



An  
Bord  
Pleanála

## Inspector's Report ABP-316301-23

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<b>Development</b>	27 Metre Telecommunications Support Structure and associated site works.
<b>Location</b>	Ballyrobin, Ferrybank, Co Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority Reg. Ref.</b>	23/18.
<b>Applicant(s)</b>	On Towers Ireland Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party v Refusal
<b>Appellant(s)</b>	On Towers Ireland Ltd.
<b>Observer(s)</b>	Deirdre McSweeney & John Breen Pascalle Bifolchi Dept of Housing (Development Applications Unit)

**Date of Site Inspection**

30-11-2023.

**Inspector**

Adam Kearney.

## 1.0 Site Location and Description

1.1. The site is located in a rural upland area at Ballyrobin, Ferrybank, Co. Kilkenny. The site is c.2 km north of Waterford City Centre and circa 500m north of the metropolitan area's urban fringe. The site is accessible from the public road (L3409) via an agricultural gate that accesses an agricultural track which skirts around a private dwelling. The proposed site is set 175m back from the nearest dwelling inside a mature hedgerow and in close proximity to a small, wooded area. The area can be characterised as rural/agricultural.

## 2.0 Proposed Development

The development will consist of a new 27 metres telecommunications support structure with headframe, carrying antennas, dishes, associated equipment, ground-based equipment cabinets, fencing and all associated site development works for high-speed wireless data and broadband services. The development will further consist of the construction of an access track.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was **Refused** for the reasons as set out.

*1. The proposed development is located within an area identified for consideration of a future road scheme in Ferrybank, Co. Kilkenny. This objective is stated and identified as objective 10E of the Ferrybank/Belview LAP 2017, restated below;*

*10E Facilitate the delivery of the Ferrybank Relief Road in tandem with the construction of new development in the area over subsequent plan periods (long term objective).*

*It is considered that the proposed development could prejudice plans for the delivery of this objective and permitting same is considered premature pending delivery of the Ferrybank Relief Road. The proposed development*

*would therefore not be in accordance with the proper planning and sustainable development of the area.*

2. *It is considered that by virtue of its lattice style design in combination with the proposed height, the proposed 27m structure would have a domineering presence which would represent a visually inappropriate intrusion on the landscape located within the Development boundary of Ferrybank: LAP and adjoining lands zoned for strategic reserve whose objective is to provide for the longer-term future development of this area. It is considered by virtue of design and height the proposal fails to set in with this landscape in terms of siting and location and would be contrary to its proper planning and sustainable development of the area.*

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

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

- applicant has identified all existing masts in the area (4 in total) and put forward reasons why co location on these mast is not possible.
- The site is zoned agriculture in the current LAP to conserve and protect agricultural land from interference from non-agricultural uses. To prevent premature development of agricultural land adjacent to development areas
- In regard to adjoining zoning notes the site is within the development boundary of Ferrybank LPA and adjoins land which is zoned 'Strategic Reserve' housing.
- The applicant has not addressed the zoning objective for the adjoining land and stated the site is located in a rural area. It should be noted that masts are not encouraged in close proximity to residential areas. Given the zonings objective of the adjoining land it is considered the applicant should investigate an alternative location for the mast.
- The site of the proposed development is located within an area identified for consideration of a future road scheme in Ferrybank, Co. Kilkenny. This

objective is stated and identified as objective 10E of the Ferrybank/Belview LAP 2017, restated below;

*'10E Facilitate the delivery of the Ferrybank Relief Road in tandem with the construction of new development in the area over subsequent plan periods (long term objective).*

- The file was referred to Roads Section who note. The proposed development is located very close to the indicative alignment of objective 10E and the proposed access route to same crosses the indicative alignment to objective 10E also. In light of same it is considered that the proposed development could prejudice plans for the delivery of this objective and permitting same is considered premature pending delivery of the Ferrybank Relief Road. I am therefore to recommend that the application be refused.
- In terms of visual impact, it was stated that the proposed structure is a lattice style structure of 27m high. The applicant states the lattice style structure is the most appropriate given the rural location and submitted a visual impact assessment submitted which include a number of photomontages. The quality of the photomontages submitted are not up to standard. I have concerns regarding the visual impact of the proposed lattice style structure in lieu of a slim monopole structure at this location. It is considered that the proposed lattice style structure would be a more dominant feature and have a negative visual impact on this landscape.
- Recommends Refusal

### 3.2.2. Other Technical Reports

Roads – Recommend Refusal

## 4.0 Planning History

None of relevance

## 5.0 Policy and Context

### 5.1. National Planning Framework

Project Ireland 2040 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.*

National Policy Objective 48: In co-operation with relevant Departments in Northern Ireland, develop a stable, innovative, and secure digital communications and services infrastructure on an all-island basis.

### 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)**

Published by the Department of the Environment and Local Government in July 1996 (as updated by Circular Letters PL07/2012) 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. **Kilkenny County Development Plan 2021-2027**

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, deigned 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.

#### **5.7. Ferrybank Belview Local Area Plan 2017**

**Section 9.4** of the LAP relates to Telecommunications and states 'The Waterford Metropolitan Area Network (MAN) is a high bandwidth fibre network that is available to authorised operators in Waterford City enabling them to sell high capacity broadband and telephony services to end users, such as large corporates. Kilkenny County Council recognises the need for an extension to the Waterford City MAN, to

connect to the Plan area, and the Belview Industrial area in particular, to attract business. Various options have been explored and routes have been identified, and Kilkenny County Council will work with the IDA, and other relevant organisations, to deliver this connection, subject to the required funding being available’.

The site is immediately adjacent to an area zoned ‘Strategic Reserve’ in the Ferrybank Belview Local Area Plan 2017 and the objective is to provide for longer term future development of this area.

### **Section 10.7.2 Ferrybank Relief Road**

This LAP proposes a new road for the plan area which will bypass the main street of Ferrybank and other built-up areas such as Rockshire.

The road will start at the Belmont Roundabout and finish at Newrath, where it will join up with the existing Newrath Road and will also be able to link into the Waterford City bypass at the Newrath Junction (See Figure 10.1). The reasons for the Ferrybank Relief Road include:

- To ensure that traffic travelling in an east-west direction will no longer need to pass through the central, built-up portion of the plan area, which is proposed as the urban village and focal point for the community.
- To increase the connectivity and permeability of existing residential areas and provide a strategic approach for long term development.
- To facilitate greater flexibility for public transport by bus routes in the future.
- To enable the creation of safe and attractive public places and areas of open space adjacent to the urban centre.

## **5.8. Natural Heritage Designations**

There are two European sites within the vicinity of the site, the Lower River Suir SAC (002137), which is circa 1.5 km to the south of the site and the River Barrow and River Nore SAC (002162), which is located c. 6 km east of the appeal site.

## 5.9. EIA Screening

The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, 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

#### Technical Justification

- There are no suitable existing structures in this area to locate Three Ireland's equipment and this area currently suffers from a severe lack of high-speed wireless broadband and data services.
- All the mobile operators namely Three, Eir and Vodafone have an obligation to provide 100% coverage throughout the country, including at this location.
- The nearest existing sites are too far away for the newer technologies to work including 4G and 5G technologies and to a large extent 3G.

#### Alternative Design Proposals are put forward for deliberation:

- 24m Lattice without a headframe (3m height reduction)
- 24m Monopole with headframe (3m Height Reduction)
- Provision for co-location of a second and third operator on this infrastructure
- Structure to be galvanised (sky colour)

#### Zoning

- Local Area Plan is 6 years old and it does not appear that there are any concrete plans or proposal for this Strategic Reserve which is agricultural at present
- Not considered that the proposal would have an impact due to the limited footprint (100m<sup>2</sup> compound)

- Request that a time limited permission of 5 years be applied so as to not conflict with future plans and allow the PA to refuse once this period has expired.

## 6.2. Planning Authority Response

- No Further Comment

## 6.3. Observations

Deirdre McSweeney & John Breen

- Would be folly to jeopardise the future delivery of a road needed to serve the area.
- Temporary permission for the mast is unworkable and contrary to guidance.
- Long terms plan is to develop housing on strategic reserve land.
- Likelihood this land will be upgraded to new residential in the new LAP.
- Allowing a mast would be premature pending the adoption of the LAP.
- Do not consider reduced height acceptable in terms of visual impact.

Pascalie Bifolchi

- Highlights health implications of structure close to residential area with young families.
- Warns of an impact on property prices if proposal allowed.

Dept of Housing (Development Applications Unit)

- Any vegetation or tree removal should take place outside nesting season between March 1<sup>st</sup> and August 31<sup>st</sup> inclusive.
- All native hedgerows to be retained except where removal for sightlines is required.
- Any supplementary planting should consist of native hedging species.

## 6.4. Further Responses

None

## 7.0 Assessment

7.1. I have read the contents of the file, and had regard to the planning authority's decision, the grounds of appeal, and the reports made to the Board by the applicant. I have visited the site, and I consider the main planning issues in the assessment of the appeal are as follows:

- Compliance with National Policy, Guidelines and Local Development Plans
- Justification/Consideration of Alternatives
- Visual Impact
- Conflict with future transport infrastructure
- Appropriate Assessment

## 7.2. Compliance with National Guidelines and Local Development Plans

The National Planning framework sets out the need to support and facilitate delivery of the National Broadband Plan and where the subject proposal meets the criteria as telecommunications infrastructure intrinsic to the 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 proposal also conforms with Ministerial Guidelines which were published in 1996 and expanded under Ministerial Circular 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 echoes the S28 guidance and subsequent Circular Letter PL 07/12.

Having regard to the relevant policy and the statutory plans for the area 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/Consideration of Alternatives**

The applicant states in their appeal that there is an urgent requirement for improved wireless broadband services in this area and that the siting of the proposed development was arrived at after first analysing the requirements to provide new and improved 2G, 3G and 4G radio coverage. Subsequent to this, the applicants employed a sequential approach to choosing a location and explained how a candidate site must be within a short radius of the 'cell search area' and within line of sight of other infrastructure in the network.

From an operator's perspective the site must also meet certain criteria around access, commercial availability, security and be capable of being served by a power supply. The cell requirement for Ballyrobin was identified as 500m radius and the applicant unsuccessfully sought co-location options using the Comreg site finder map register within the cell search area. This data is presented in the appeal document (Table 1 p10). As a result, a new free-standing structure was proposed as a last resort.

I am satisfied having reviewed the information that the applicant has sought to utilise existing infrastructure in the area and that the only option open was to seek permission for the subject site. I am also satisfied that the capacity of the current proposal will allow for additional operators to use this equipment in the future, thereby reducing the requirement for additional new standalone infrastructure.

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

A Visual Impact Assessment was prepared in accordance with the guidelines for Landscape and Visual Impact Assessment (2013).

10 viewpoints were chosen VP1 – VP 10 where it was considered the proposed infrastructure was visible and where these points intersected with public roads, residential areas, cultural heritage assets and public rights of way. All 10 were predicted to have a negligible impact when the scale of the proposal in terms of footprint, lattice/monopole type design and existing screening from mature trees was considered. The report determines that there would be No Significant Visual Impact and refutes the suggestion that the structure would have a domineering presence. It is also refuted that the structure fails to set in with the landscape in terms of siting and location.

Having visited the site and reviewed the visual impact assessment and supporting photomontages I am satisfied that the structure in lattice or monopole design would not have a significant impact given the nature of the site in terms of existing mature trees and its relative remoteness.

I do however note the location of the proposed mast is bounding lands identified for future development presently under the designation of 'Strategic Reserve' in the Ferrybank Belleview LAP 2017 and as such I am cognisant that there will come a time in the medium to longer term where the environs of the infrastructure will transition from rural to urban. To this end, I consider the more slimline profile of a monopole with a headframe at a reduced height of 24m to be an acceptable compromise. This is an option that has been suggested by the applicant in the appeal document to overcome concerns expressed about visual impact.

## 7.5. Conflict with future transport Infrastructure

The first reason for refusal offered by the Planning Authority envisaged the proposed telecommunications infrastructure *'could prejudice plans for the delivery of this objective (10E of the Ferrybank/Belview LAP 2017) and permitting same is considered premature pending delivery of the Ferrybank Relief Road'*

The relief road referred to is shown as an indicative route in the 2017 LAP. I note from a perusal of the Kilkenny County Council website that there are no tangible plans in place to progress this objective at this time. I note there is a road scheme proposed to in the Ferrybank area to link Abbey Road to Belmont Road and that this is at an advanced design stage. This proposed road infrastructure is circa 1.5km southeast of the proposed site. This circa 0.5km long route is an inner link route that will accommodate private vehicles, active travel, and public transport.

It is unlikely in my opinion that the Ferrybank relief road as indicated in the 2017 LAP will come to fruition in the near future. The road plan at present is represented by an indicative route on a zoning map. To progress such a scheme in terms of preferred routes, funding, permission and CPO's could take up to 10 years if initiated in the short term.

I do not accept that a small 100m<sup>2</sup> compound proposed for an area where there are currently no tangible design proposals for a relief road should serve to stymie telecommunications infrastructure required in the near term.

In any event and future transport corridor with preferred routes will take account of obstacles and landscape features. The proposed compound by reason of its scale and small footprint will not in my opinion serve to offer an impediment to road designers in the future when plotting a more defined route for the road if it is to be realised.

Further, I note the applicants have indicated they would be willing to accept a temporary permission to allow more clarity to be brought to bear on this timeline for a relief road. I do not however see a necessity to apply a limited time period permission for the proposed telecommunications infrastructure.



## 7.6. **Appropriate Assessment Screening**

Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom/to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage

## 8.0 **Recommendation**

8.1. GRANT permission for the proposed development in accordance with the said plans and particulars based on the following reasons and considerations and subject to the conditions set out below.

## 9.0 **Reasons and Considerations**

In coming to its decision, the Board has had regard to the following:

- (a) National Planning Framework
- (b) National Broadband Plan
- (c) The Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, issued by the Department of Environment and Local Government in 1996,
- (d) The Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, Circular Letter PL07 /12, issued by the Department of Environment, Community and Local Government,
- (e) The objectives of the Kilkenny County Development Plan 2021-2027,
- (f) The Ferrybank Belview Local Area Plan 2017
- (g) The nature and scale and location of the proposed telecommunication structure,
- (h) The submissions and observations received,

- (i) The decision of the planning authority.

It is considered that, subject to compliance with the conditions set out below, the proposed development would be consistent with referenced policy, guidance and statutory plans, 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.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by An Bord Pleanála on the 17<sup>th</sup> day of April 2023, 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 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 proposed mast and all associated antennas, equipment and fencing shall be demolished and removed from site when it is no longer required. The site shall be reinstated to its pre-development condition at the expense of the developer.</p> <p><b>Reason:</b> In the interest of orderly development</p>
3.	<p>The antennae type and mounting configuration shall be in accordance with the alternative configuration (<b>24m Monopole with Headframe</b>) as submitted with this application/appeal and notwithstanding the provisions of the Planning and Development Regulations 2001, and any statutory provision amending or replacing them, shall not be altered without a prior grant of planning permission.</p>

	<p><b>Reason:</b> To clarify the nature and extent of the permitted development to which this permission relates and to facilitate a full assessment of any future alterations.</p>
4.	<p>A low intensity fixed red obstacle light shall be fitted as close to the top of the monopole as practicable and shall be visible from all angles in azimuth. Details of this light, its location and period of operation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of public safety.</p>
5.	<p>Details of the proposed colour scheme for the telecommunications structure and ancillary structures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of the visual amenities of the area.</p>
6.	<p>(a) No advertisement or advertisement structure shall be erected or displayed on the proposed structure or its appendages or within the curtilage of the site without a prior grant of planning permission and</p> <p>(b) the proposed cabinet, monopole and compound area shall be maintained regularly and shall be kept graffiti free.</p> <p><b>Reason:</b> In the interest of the visual amenities 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.

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Adam Kearney  
Planning Inspector

15<sup>th</sup> December 2023