



An
Coimisiún
Pleanála

Inspector's Report ABP-322496-25

Development	Construction of a 24m lattice telecommunications support structure and all associated site works.
Location	Danesfort, County Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	2460490
Applicant(s)	Vantage Towers Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party Appeal and First Party (Financial Contribution Appeal)
Appellant(s)	Edward Butler (Third Party) Vantage Towers Limited (First Party)
Observer(s)	None
Date of Site Inspection	1 st July 2025

Inspector

Frank O'Donnell

Contents

1.0 Site Location and Description	5
2.0 Proposed Development	5
3.0 Planning Authority Decision	6
3.1. Decision	6
3.2. Planning Authority Reports	7
3.3. Prescribed Bodies	8
3.4. Third Party Observations	8
4.0 Planning History	8
5.0 Policy Context	9
5.1. Development Plan	9
5.2. Kilkenny Development Contribution Scheme, 2016-2017	12
5.4. Natural Heritage Designations	16
5.5. EIA Screening	16
6.0 The Appeal	17
6.1. Grounds of Appeal	17
6.2. Applicant Response	19
6.3. Planning Authority Response	22
6.4. Observations	23
6.5. Further Responses	23
7.0 Assessment	24
8.0 AA Screening	31
9.0 Water Framework Directive	31
10.0 Recommendation	32

11.0 Reasons and Considerations.....	33
Appendix 1 – Form 1: EIA Pre-Screening	

1.0 Site Location and Description

- 1.1. The subject appeal site, which comprises an existing 15 metre high lattice telecommunications structure, is located in the townland of Danesfort, approximately 9 km to the south of the centre of Kilkenny City and c. 396 metres to the south of junction 09 of the M5 Motorway and the intersection of the N10 National Secondary Road and the R713 Regional Road. The site has a stated site area of 0.009 hectares and is accessed off a disused gated former local road to the west of the R713.
- 1.2. There is an existing Protected Structure (RPS Ref. No. C451: Danesfort. Garden Folly. Freestanding single-bay two-stage turret folly, c.1800, on an octagonal plan. Now in ruins), located c. 238 metres to the southwest of the subject appeal site. The folly which is associated with Deansfort House estate is also listed on the National Inventory of Architectural Heritage (NIAH) as being of Regional Importance, see Reg. No. 12402307. In addition, at the same location, there are 2 no. Recorded Monuments ref. KK023-080 – Castle – Ringwork and Bailey and ref. KK023-080001 – Designed Landscape – Folly. There is also a separate Recorded Monument located c. 40 metres to the east of the appeal site, Ref. KK023-140 – Ring Ditch.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - The erection of a 24 metres lattice telecommunications support structure on a 1.2 metres high raised foundation (overall height 25.2 metres) together with associated antennae's and dishes.
 - Removal of the existing 15 metres lattice telecommunications structure.
 - The proposed development is enclosed within an existing compound.

3.0 Planning Authority Decision

3.1. Decision

The Local Authority issued a Request for Further Information on 6th December 2024 on 2 no. main points, as follows:

1. *The applicant is requested to carry out and submit a Cultural Heritage and Landscape Impact Assessment carried out by a suitably qualified archaeologist which shall include results of both an Architectural Heritage Impact Assessment and Archaeological Impact Assessment (including visual impact assessment), with particular regard to structure listed on the National Inventory of Architectural Heritage ref. NIAH ref. 12402307, and recorded monuments ref. KK023-080--- and KK023-080001 located to the south of the site, in addition to impacts on recorded monument KK023-140----, and on the wider cultural and archaeological landscape.*

Having regard to the outcome of the Cultural Heritage and Landscape Impact Assessment and resulting recommendations, the applicant may consider alternative proposals for the consideration of the planning authority, particularly as regards the limitation of visual impacts on protected structures. Complete relocation may also be a resultant requirement.

2. *Please clarify that the applicant has sufficiency of interest with respect to access over the private road during the construction and operational phases of development.*

The Local Authority issued a Notification of Decision to GRANT permission on 29th April 2024 subject to 10 no. conditions.

Condition no. 2 reads as follows:

2. *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 2000-2023.*

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 €10,000.00 (Ten thousand Euro), however this amount may be recalculated in accordance with any newly adopted Development Contribution Scheme that may supercede 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 2000-2023 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. *On completion of installation of the new structure the existing 15m lattice structure shall be removed. No existing screening trees shall be removed from the site without the express permission of the planning authority.*

Reason: *In the interest of visual amenity.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Local Authority Planner** considered that although the proposed development will have a greater impact than the existing telecommunications structure at this location, having regard to the existing tree cover, the existing signage and road infrastructure, the limited extent of views of the proposed development and the existing telecommunications structure at this location, the proposed development is considered acceptable at this location. The Local Authority Planner further considered that having regard to the policies and objectives of the Kilkenny City and County Development Plan, 2021 to 2027, the proposed development subject to conditions, would not seriously injure the amenity of the area and would therefore, be in accordance with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

- The **Conservation Officer** considered that having regard to the Cultural Heritage and Landscape Impact Assessment, no objection is raised to the proposed development.
- The **Environment Department** raised no objection to the proposed development subject to 2 no. conditions relating to waste recovery and removal and control of environmental impacts (noise and dust).

3.3. Prescribed Bodies

- **An Taisce:** The Cultural Heritage and Landscape Impact of the proposed development requires assessment.

3.4. Third Party Observations

3.4.1. 1 no. third party submission was received from the following:

- Edward Butler

3.4.2. The main issues raised in the submission are similar to those referred to in the decision of the planning authority and in the Grounds of Appeal.

4.0 Planning History

4.1. Planning History on the subject appeal site:

- None

4.2. Site c. 132 metres to the south

- 24/60050: Permission for construction of single storey extensions to front and rear of existing derelict cottage, all associated demolition works, and alterations to existing cottage to facilitate re-instatement works and ancillary related site works. Permission was GRANTED on 13th May 2024 subject to 12 no. conditions.

5.0 Policy Context

5.1. Development Plan

- *Kilkenny City and County Development Plan, 2021 to 2027*

5.1.1. Chapter 10 relates to Infrastructure and Environment.

5.1.2. Section 10.4 relates to Telecommunications and states:

‘The Council recognises the importance of advanced communications infrastructure for an information-based society, and as a key support for business, education and research. The Council will support and facilitate the provision of advanced communication networks and services to the extent required to contribute to national, regional and local competitiveness and attract inward investment. The Council will also encourage the further co-ordinated and focused development and extension of telecommunications infrastructure including broadband connectivity in the county, as a means of improving economic competitiveness.’

5.1.3. Section 10.4.1.2 relates to National Broadband Plan and includes the following statement:

‘..Some of County Kilkenny’s towns suffer from broadband deficiencies, which are detrimental to their economic growth. The Council will work towards remedying this, through facilitating the implementation of the National Broadband Plan.

The Council will facilitate the delivery of the National Broadband Plan in accordance with National and Regional policy to:

- o Promote the attractiveness of smaller settlements and rural areas generally for economic development, both indigenous and FDI;*
- o Facilitate more flexible working arrangements such as working from home;*
- o Reduce social isolation.’*

5.1.4. Section 10.4.1.4 relates to Telecommunications Antennae and states the following:

‘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.’

5.1.5. The following Objectives are provided in Section 10.4.1.4 (Telecommunications Antennae):

- **Objective 101:** *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 102:** *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.*

5.1.6. The following Broadband Development Management Requirements are provided

- *All new developments and all refurbishments and urban renewal projects shall, at planning and design stage, show how they will provide for the installation sufficient of carrier neutral ducting for fibre-based data services and incorporate unobtrusive carrier neutral antennae where feasible to facilitate future co- location of services and accommodate multifunctional technologies in the rollout of high-speed broadband and the internet of everything;*
- *All new significant public infrastructure works such as roads, water and sewerage shall provide carrier neutral ducting where feasible.*
- *Ensure the provision for development in connection with telecommunications is made in ways which will maximise the use of existing masts and sites so as to limit the impact of development.*

5.1.7. The following Telecommunications Antennae Development Management Requirements are provided:

- *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 Development Contribution Scheme, 2016-2017

- **Class 15:** Communications Masts (€10,000) per mast
- **Exemptions from the payment of Development Contributions:** ...
 - *... 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. Any new buildings associated with masts and antennae will be charged at the commercial rate.*

5.3. Guidelines/ Circulars

5.3.1. Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities, 1996

5.3.2. The 'Guidelines for Planning Authorities on Telecommunications Antennae and Support Structures' (1996) set out government policy for the assessment of proposed new telecommunications structures ('the 1996 Guidelines'). The Guidelines state that the rapid expansion of mobile telephone services in Ireland has required the construction of base station towers in urban and rural areas across the country. This is an essential feature of all modern telecommunications networks. In many suburban situations, because of the low-rise nature of buildings and structures, a supporting mast or tower is needed.

5.3.3. Section 1.2 relates to National Policy Issues wherein it is stated that *'fragile landscapes have to be treated sensitively, scenic views preserved, archaeological/geological sites and monuments and buildings of historical and architectural interest protected and sacred areas respected.'*

5.3.4. Section 4.3 of the Guidelines refers to visual impact and considers that this is one of the more important considerations which have to be taken into account in arriving at a decision on a particular application. In most cases, the Applicant will only have limited flexibility as regards location, given the constraints arising from radio planning parameters, etc. Visual impact will, by definition, vary with the general context of the proposed development.

5.3.5. The Guidelines state that the approach will vary depending on whether a proposed development is in:

- a rural/agricultural area;
- an upland/hilly, mountainous area;
- a smaller settlement/village;
- an industrial area/industrially zoned land; or
- a suburban area of a larger town or city.

5.3.6. The Guidelines states that *'Whatever the general visual context, great care will have to be taken when dealing with fragile or sensitive landscapes, with other areas*

designated or scheduled under planning and other legislation, for example, Special Amenity Areas, Special Protection Areas, the proposed Natural Heritage Areas and Special Areas of Conservation and National Parks. Proximity to listed buildings, archaeological sites and other monuments should be avoided.'

- 5.3.7. The Guidelines state that some masts will remain quite noticeable despite best precautions. It is further stated that 'local factors which have to be taken into account in determining the extent to which an object is noticeable or intrusive intermediate include objects (buildings or trees), topography, the scale of the object in the wider landscape, the multiplicity of other objects in the wider panorama, the position of the object with respect to the skyline, weather and lighting conditions, etc.'
- 5.3.8. In the vicinity of larger towns and in City suburbs the Guidance recommends that operators should endeavour to locate in industrial estates or in industrially zoned land. The Guidance also recommends that some commercial and retail areas should be explored whether as rooftop locations or by way of locating 'disguised' masts. ESB substations are also identified as potentially suitable locations for antennae support structures. The use of tall buildings or other structures in urban and suburban areas are stated to be always preferable to the construction of an independent antennae support structure. Only as a last resort and if the suggested alternatives are either unavailable or unsuitable should free-standing masts be located in a residential area 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. The support structure should be kept to the minimum height consistent with effective operation and should be monopole (or poles) rather than a latticed tripod or square structure.
- 5.3.9. **Development Contribution Guidelines for Planning Authorities, 2013**
- 5.3.10. These guidelines require planning authorities in reviewing their development contributions schemes to include waivers for broadband infrastructure (masts and antennae). The Guidelines further state that the practice of "double charging" is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing "planning gain" in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a

given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

5.3.11. DoECLG Circular Letter PL 07/2012

5.3.12. This Circular was issued to Planning Authorities in 2012 and updated some of the sections of the above Guidelines including ceasing the practice of limiting the life of the permission by attaching a planning condition. It also reiterates the advice in the 1996 Guidelines that planning authorities should not determine planning applications on health grounds and states that, *'Planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matters in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process'*.

5.3.13. It advises Planning Authorities to:

- Cease attaching time limiting conditions or issuing temporary durations to telecommunications masts, except in exceptional circumstances.
- Avoid including minimum separation distances between masts or schools and houses in Development Plans.
- Omit conditions on planning permissions requiring security in the form of a bond/cash deposit.
- Not include monitoring arrangements on health and safety or to determine planning applications on health grounds.
- Include waivers on future development contribution schemes for the provision of broadband infrastructure.

5.3.14. DoHPLG Circular Letter PL03/2018

5.3.15. This Circular is a revision of Development Contribution Guidelines in respect of Telecommunications Infrastructure (3rd July 2018). This circular was mandatorily required to be applied by planning authorities. Reference was made to the previous Circulars (as outlined above) and specifically to the requirement for L.A.s to include waivers and reductions in their Development Contribution Schemes, including the application of a specific waiver for broadband infrastructure (masts and antennae). It

was noted that whilst this waiver was primarily aimed at facilitating the roll-out of broadband infrastructure, most local authorities had extended it to include mobile phone infrastructure for the purpose of improving mobile phone coverage in their areas. The Circular requires those local authorities who have not yet done so, to ensure that their Development Contribution Schemes are updated to include such waivers in respect of both mobile phone and broadband infrastructure. Specifically, it is stated -

‘This waiver shall apply to any telecommunications infrastructure, both mobile and broadband, being deployed as part of a Government endorsed telecommunications strategy, plan or initiative. Where mobile or broadband operators demonstrate to the satisfaction of the planning authority that their infrastructure provides services to customers who would not otherwise be able to avail of an adequate mobile or broadband service, such infrastructure shall not attract development contributions. Furthermore, the waiver applies to masts, antennae, dishes and other apparatus or equipment being installed for such communication purposes.’

5.3.16. DoH LGH Circular Letter PL/11/2020

5.3.17. This circular relates to Telecommunications Services - Planning Exemptions and Section 254 Licenses.

5.4. Natural Heritage Designations

5.4.1. The site is not located within or adjacent to a Natura 2000 site. The nearest Natura 2000 sites is as follows:

- River Nore SPA, Site Code (004233), c. 2.63 km to the south;
- River Barrow and River Nore SAC, Site Code (002162), c. 2.61 km to the south;

5.5. EIA Screening

5.5.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory

requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

6.0 The Appeal

6.1. Grounds of Appeal

(Third Party Appeal)

6.1.1. 1 no. Third Party Appeal was received from the following:

- Edward Butler

6.1.2. The main issues raised can be summarised as follows:

- Misleading application and Inaccurate Information:
 - The manner in which the proposed development and its impact upon the existing monument is presented in the application is misleading. An attempt has been made to make an historical building disappear.
 - If the proposal proceeds this will undermine future public confidence in the planning process.
 - The map submitted with the application was poor on detail and quality. The map was but not of sufficient detail to allow the public to determine any close location between the proposed development and monument.
 - The views presented do not accurately represent the impact the proposal will have upon the surrounding countryside. The Cultural Heritage and Landscape Impact Assessment only showed one photograph of the proposed replacement tower, the same photo to that originally submitted which, along with the other 48 no. photos was dark and of poor quality. The glare of sunlight on the galvanised tower has been misrepresented.
 - The Appellant contacted 3 no. telecommunication companies currently co-locating on the tower. All 3 no. companies confirmed there is currently no 5G antennae are operating on the said tower. There is no 5G equipment installed at the tower. The Local Authority should have

refused permission on the basis of misleading information and lack of justification for the new tower. The Local Authority did not seek clarification on this issue.

Lack of Justification/ Need for Mast:

- High speed broadband is already available at every house in the entire area. The speeds offered are higher, more reliable and cheaper to that provided by the mobile network. Contrary to statements made by the applicant, the existing fibre optic network in the area significantly reduces draw on mobile high speed. Existing communities have full coverage and 5G has been successfully installed in similar instances without any issues. The newly established 5G network is advertised by the telecommunications companies using these masts without the need to construct a 24 metre tower. The need for the proposed new tower has not been justified. 15 metre structures could deliver the required 5G.
- The proposal is falsely presented as a signal booster which is not required. A community need is not established. The proposal seeks to serve distant areas and in doing so seeks to reduce costs.
- The proposal presents a Visual Impact.

(First Party Financial Contribution Appeal)

6.1.3. 1 no. First Party Financial Contribution Appeal was received from the Applicant (Vantage Towers Limited). The main issues can be summarised as follows:

- The Financial Contribution Appeal only relates to Condition no. 2 of the Notification of Decision to GRANT permission issued by the Local Authority on 29th April 2024. Condition no. 2, as quoted in full above in Section 3.0 of this Report, states, inter alia, that the amount of contribution is calculated at €10,000.00 (Ten Thousand Euro).
- **Ground 1:** (Application of Development Contribution Scheme - Proposal is exempt): The Development Contribution Scheme (2016 to 2027) has been adopted incorrectly. Class 15 has been applied whereas the development

should fall under Exemptions from the payment of the Development Contributions as the proposals do not include any new buildings.

- **Ground 2:** The Applicant refers to 4 no. precedent cases for replacement structures in County Kilkenny which have been deemed exempt from financial contributions, including 2 no. cases which were decided on appeal. The Appellant also refers to a separate appeal case, also in County Kilkenny, where the financial contribution was removed on appeal.
- **Ground 3:** The Applicant refers to 5 no. previous Appeal cases in the Country (1 no. in County Kilkenny) where the financial contribution was removed.
- **Ground 4:** The Applicant considers that Circular Letter PL/03/2018 should have been applied. The Local Authority has applied an outdated contribution scheme and contravenes Government Circular PL03/2018 - Revision of Development Contribution Guidelines which is a mandatory requirement. Although this waiver is aimed primarily at facilitating the roll out of broadband infrastructure, the majority of Local Authorities have extended this to include mobile phone infrastructure. Under appeal ref. no. ABP-308859-20 in Kilkenny, the requirement to apply circular letter PL03/2018 waivers to broadband infrastructure (masts and antennae) and that this be extended to include mobile phone infrastructures was raised. The Board in that said case removed a condition requiring a development contribution.

6.2. Applicant Response

6.2.1. The Applicant submitted a Response to the Third Party Appeal which can be summarised as follows:

- Site Location and Proposed Development
 - The Applicant provides an overview as to the site location and notes, in particular, its location at the intersection of the M9 Motorway and the R717 Regional Road to the south of Kilkenny City.

- The proposal is effectively a replacement for an existing 15 metre high telecommunications mast. The proposal seeks to improve, enhance and provide for additional services in the area.
- Planning Process
 - The applicant considers the information provided in the application is comprehensive and has informed the decision of the Local Authority to Grant permission.
 - A Market Overview is provided which references the three main operators in Ireland, the everchanging telecommunications market and associated demands for services.
 - The taller telecommunications mast proposed will serve to increase coverage.
 - The Applicant provides an overview as to the importance of modern 5G Technology and associated economic benefits.
 - An explanation is provided in relation to the difference between Outdoor and Indoor/ In-Car Coverage and the importance of, and need for, modern services close to the source of demand and coverage along the Motorway Network and a growing demand for technology with suitable coverage to serve Smart Buildings.
- Misleading application, and nearby monument
 - The Applicant acknowledges that some genuine mistakes may have been made in the information provided but they were not intentionally presented to mislead or confuse.
 - The Applicant quotes from the concluding stated of the Cultural Heritage and Landscape Impact Assessment Report and notes the Local Authority Conservation Officer raised no objection to the proposals and that this then informed the decision of the Local Authority to Grant permission.

- Verified view query and Visual Impact
 - The Applicant provides an overview as to how the Verified Images were produced and chosen. A description of the photomontages is provided in the Cultural Heritage and Landscape Impact Assessment Report.
 - The Applicant considers the photomontages provide an accurate representation of the proposed structure.
- Failure to inform Local Residents
 - This is not a requirement nor indeed is this common practice.
- Inaccurate Information
 - The Technical Justification submitted with the Applicants Appeal Response answers the queries raised in the Appeal.
 - 5G is proposed to be incorporated into the existing structure. The Applicant is unable to verify any contact or meetings with operators.
- Need for the increased Height of the New Mast
 - The Applicants' need to provide for the increased height of the New Mast is already addressed in the Technical Justification Report attached to the Appeal Response.
 - Regarding the availability of Fibre Broadband, the Applicant refers to advice provided on the ComReg website.
 - The tower will be available for other operators to share.
 - The Applicant refers to the ComReg Quarterly Report on the Irish Telecommunications Market which includes an estimate as to the overall number of Broadband subscribers in the Country as of the end of 2024 and the extent of quarterly and annual growth in the sector. The Applicant notes this is not all Fibre. A ComReg Table extract is provided which further breakdowns as to the various types of broadband including, for example, Cable, DSL, VDSL, FTTP, Satellite, FWA, Total Fixed and Mobile Broadband. The Applicant submits that Fibre and Mobile markets and services are very different, both working

independently from one another and together and both required for the modern age.

- Planning Appellants Submission was included in the Appeal
 - The planning assessment of the Local Authority has already addressed the key issues raised in the submission.
 - The same key issues are raised again in the Appeal and the Applicant considers they have suitably addressed them in their Response.
- Technical Justification
 - The Applicants' Appeal Response includes a Technical Justification. The Site Selection Justification explains the Coverage Requirements, Available Technologies, the Target Area and an Analysis of Existing Sites. Site Coverage Predictions are provided in Section 3.0.
 - In summary, the increased height of the mast to 24 metres is required in order to enable the delivery of high-quality voice and data services. The Applicant has analysed a total of 7 no. existing sites within a maximum radius of 7 km. The Applicant finds that 5 of the 7 no. sites are either not suitable due to the distances involved or are obscured by existing terrain. 2 no. existing sites within 5.6 km (i.e. Ref. No. KK01330 located within 3.7 km and KK0026 located within 5.6 km) do not currently have Vodafone at their sites.

6.3. Planning Authority Response

- In Response to the First Party (Financial Contribution Only) Appeal:
 - The Local Authority considered that the Development Contribution Scheme has been correctly applied. The charge was calculated under Category 15 - Communications Masts where the charge is set at €10,000. Under the 1985 exemptions the original structure was exempt and for that reason, no development contributions were paid. Development contributions therefore now fall due on this replacement structure.

- In Response to the Third Party Appeal (Stated to be Second Party), the Local Authority state they have no further comments to make.

6.4. Observations

- None

6.5. Further Responses

- The First Party submitted a Response to the above Local Authority submission. The First Party Submission is dated 19th June 2025.
- The issues raised in the First Party Submission primarily relates to the First Party Contribution Only Appeal and can be summarised as follows:
 - Retrospective Charge:
 - As the original mast and the proposed mast are considered to be exempt, a Retrospective Charge is not applicable.
 - Existing Mast is Exempt:
 - The Existing Mast was erected under exemption rules which applied at the time where a financial Contribution was not required.
 - Circular Letter PL03/2018 is Applicable
 - Circular Letter PL03/2018 is applicable. The proposed development is therefore exempt from a financial contribution.
 - Precedent Appeal cases:
 - The Applicant refers to a number of precedent Appeal cases where financial contributions were removed by the Board.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal and the reports of the planning authority and having inspected the site, and having regard to relevant local/ regional and national policies and guidance, I consider the main issues in this appeal are as follows:

- Lack of Justification/ Need for Mast
- Impact on Monument/ Visual Impact
- Financial Contribution
- Other Matters
 - *Misleading and inaccurate information*

7.2. Need for Mast/ Lack of Justification

- 7.2.1. I note the concerns of the Appellant in relation to the justification/ need for the proposed telecommunications mast. The Commission will note there is an existing 15 metre high lattice telecommunications mast at this site which is proposed to be decommissioned and replaced with a new 24 metre high lattice structure (a 9 metre difference in height/ Overall height above ground level of 25.2 metres including an existing 1.2 metre high concrete plinth).
- 7.2.2. I note the initial planning case presented by the Applicants' in relation to the need and justification for the proposed mast at this location. I also note the Applicants Response to the Third Party Appeal and the Appeal Response of the Local Authority wherein it is stated there are no further comments to make in relation to this element of the Third Party Appeal (stated to be Second Party).
- 7.2.3. The subject appeal site is an established telecommunications site which has been in place for a considerable length of time. As part of the Planning History set out in the Applicants Planning Report/ Cover Letter accompanying the application, the Applicant submits that the existing installations and mast were installed and erected as exempted development under Class 29 of the Planning and Development Regulations, 1994. I do not dispute the exempted status of the existing installations.

- 7.2.4. I note Section 3.4.5 of the Applicants' Appeal Response submission relates to 'Need for the increase height of the mast' which first refers to the submitted Technical Justification, explains what fibre broadband comprises of when available and then explains the purpose of the mast is to provide a wider range of services to both fixed locations and for mobile coverage and for a wide range of services which need information to be transferred often over long distances. As part of the stated purpose for the mast the Applicant notes it will be available for other operators to share. The Applicant submits that although fibre plays an important role in the provision of fixed broadband services, it is not the sole means by which such services are provided. The Applicant further submits that both the fibre and mobile broadband markets differ significantly and that both work independently from one another yet also together.
- 7.2.5. I note the Technical Justification document submitted by the Applicant, Section 2.0 of which provides a justification for the Site Selection which includes Coverage Requirements, Technologies, Target Area and Existing Sites Analysed. The Site Coverage Maps provided in Section 3.0, in my opinion, show the proposed development will significantly improve in-car and indoor coverage for a range of users and along existing transport routes in the form of improved broadband data and voice services. The same extent of indoor coverage would not, in my opinion, be provided by the existing infrastructure on the subject site.
- 7.2.6. I am satisfied the Applicant has suitably demonstrated both a need and justification for the proposed new replacement mast and associated increase in height.

7.3. Impact on Monument/ Visual Impact

- 7.3.1. As noted further above, the folly to the southwest is listed in the Development Plan as a Protected Structure (RPS Ref. No. C451) and on the National Inventory of Architectural Heritage (NIAH), ref. no. 12402307. This said site, located c. 238 metres to the southwest of the appeal site, also includes 2 no. recorded monuments. I note there is also a separate recorded monument located c. 40 metres to the east of the Appeal site.
- 7.3.2. I note point no. 1 of the Request for Further Information issued by the Local Authority sought a Cultural Heritage and Landscape Impact Assessment (CHLIA). I note the

Applicants' Response which, in addition to the required Assessment, includes a Section on Cultural Heritage Impact Assessment including Visual Impact Assessment.

- 7.3.3. The Appellant considers the Cultural Heritage and Landscape Impact Assessment (Architectural Heritage/ Archaeological Heritage/ Visual Impact Assessment) to be misleading in terms of the Visual Impact presented by the proposed development with the historical monument in its shadow.
- 7.3.4. I note the relationship between the folly and the appeal site which includes the existing 15 metre telecommunications mast. The appeal site itself is accessed via an existing disused former road. As stated, the folly is located c. 238 metres to the southwest of the subject appeal site and is located in an elevated position within an open field. The northeastern field boundary of the said open field on the west side of the existing disused former road is defined by mature trees and hedging. At ground level at this location, i.e. at the entrance to the subject appeal site off the said former road, the folly is not, in my opinion, readily visible from the subject appeal site. At a field entrance gate on the western side of the R713 positioned c. 14 metres off the near edge of the carriageway and c. 105 metres further north from the subject appeal site, the elevated folly can be picked out in the background with the mast site in the midground. A clear unobstructed view of the folly from this field entrance location was not available owing to the extent of existing tall mature trees and hedging. At the time of my site inspection, there were other intermittent views of the existing mast available on approach to the subject appeal site along the R713 from the north, although the existing folly was not readily visible owing to extensive intervening tall trees and hedging along the field boundaries.
- 7.3.5. On approach to the subject appeal site from the south along the R713 there are both intermittent and clear views available of the upper part of the existing mast structure. I note as part of site clearance works to an existing dwelling positioned to the immediate east of the folly, as planning reg. ref. no. 2460050 refers, that the folly is now more open and exposed when viewed from the R713 to the east. I note the ridgeline of the recently renovated dwelling at this location is significantly below the ground level of the folly in the background.

- 7.3.6. I agree with the statement in the CHLIA that as there is no public access to the folly the important view is therefore from the public road towards the folly. In this regard, I note that directly in front of the Appellants main entrance on the R713 and looking west/ northwest, both the upper part of the existing mast and the folly are visible with the recently renovated dwelling (2460050) in the foreground. In my opinion, from this viewpoint, the folly is currently the dominant feature in the landscape.
- 7.3.7. As part of the initial documentation submitted to the Local Authority, I note the Applicant provided a Visual Impact Assessment of the proposed 24 metre high mast (overall height 25.2 metres AGL) based on a total of 5 no. Viewpoints. Viewpoints 1 and 5 are taken from the south with viewpoints 2, 3 and 5 from the North. Viewpoint no. 1 is on approach to the site from the south. While I do not dispute this Viewpoint (No. 1), taken on 1st October 2024, is a true representation, the reality is that in the meantime the view of the folly further to the north along the R713, less than a year later, has become more exposed. It is unclear as to whether the site clearance associated with the cottage renovation permitted under planning ref. no. 2460050 took place prior to the date of completion of the CHLIA indicated to be 18th February 2025 as I note this relies on the initial VIA and 5 no. photomontages as initially presented by the Applicant and dated 8th October 2024.
- 7.3.8. Section 8.3 of the CHLIA provides a summary of the Visual Impact Assessment. In Section 8.3.5 the Applicant states that *'the proposed development will not impact on the physical remains of the ringwork mound or the garden folly building and there will be no visual impact caused by the proposed structures at the base of the proposed telecoms tower which will be hidden from view by surrounding tree coverage.'* This, in my opinion, clearly relates to the 'base of the telecoms tower' and fails to acknowledge or indeed appraise the proposed 24 metre high mast structure and its visual impact upon the folly/ Protected Structure. I accept that although it is later stated in Section 9.0 of the Report under point no. 3 that *'the proposed development will not have an impact on the visual amenity of the architectural and cultural heritage and its landscape setting as one approached from the south due to a number of factors.'* I am not satisfied that it has been clearly and unequivocally demonstrated that the proposed replacement 24 metre high mast will not result in a negative visual impact upon the character and setting of the Protected Structure.

7.3.9. I note as per Section 1.2 of the Telecommunications Guidelines, 1996, it is stated that ‘...*fragile landscapes have to be treated sensitively, scenic views preserved, archaeological/geological sites and monuments and buildings of historical and architectural interest protected and sacred areas respected.*’ With specific regard to Visual Impact, in Section 4.3 of the Guidelines, it is stated that ‘...*proximity to listed buildings, archaeological sites and other monuments should be avoided.*’ I consider the Protected Structure and its setting to be a sensitive environment worthy of protection. I further consider that the proposed new replacement 24 metre high mast has the potential to dominate the existing folly in the landscape.

7.3.10. Having regard to the foregoing and notwithstanding the fact that the site is an existing utilities site and that the Applicant has demonstrated a need and has provided appropriate technical justifications, it is my opinion that the proposed development presents an unacceptable visual impact upon the character and setting of the Protected Structure and designed landscape, will serve to compete with the dominance of the existing folly in the landscape and is therefore not in accordance with the proper planning and sustainable development of the area. Permission should therefore be refused.

7.4. Financial Contribution

7.4.1. Condition no. 2 of the Notification of Decision to Grant permission issued by the Local Authority, as quoted above in Section 3.0 of this Report, relates to a financial contribution of €10,000. I note the issue of a financial contribution is not discussed or appraised as part of the 2 no. Local Authority Planners Reports. A financial contribution condition is instead attached as one of a number of recommended conditions at the end of the second Local Authority Planners Report dated 28th April 2025. I also note the Local Authority Appeal submission and the associated justification provided for the attachment of said financial contribution.

7.4.2. I agree with the Applicant that the existing mast represented exempted development under Class 29 of the 1994 Local Government Planning Regulations and that no development contribution applied.

7.4.3. I note the Kilkenny Development Contribution Scheme 2016 - 2017 where, in relation to Communications Masts, a contribution of €10,000 is referenced under Class 15. I also note the exemptions for masts and antennae and other apparatus/ equipment

for communication purposes, as set out on page 6 of the Scheme and as quoted further above in Section 5.0 of this Report.

- 7.4.4. I further note Circular Letter PL03/2018 which is titled '*Revision of Development Contribution Guidelines in respect of Telecommunications Infrastructure*', the relevant extract in relation to telecommunications structures is quoted above in Section 5.0 of this Report.
- 7.4.5. The Applicant submits that the proposed development will provide voice, data and broadband services, that this accords with National Policy and that the proposed development does not comprise any new buildings.
- 7.4.6. I am satisfied that the proposed development, as presented, accords with endorsed National Telecommunications Policy, including the National Broadband Plan. I am also satisfied that no new structures are proposed. As per Guidance set out in the circular and, in order to qualify for the exemption, there is an onus upon the Applicant to '*demonstrate to the satisfaction of the planning authority that their infrastructure provides services to customers who would not otherwise be able to avail of an adequate mobile or broadband service, such infrastructure shall not attract development contributions.*'
- 7.4.7. In this regard, I note the Applicants Response to the First Party Appeal and the associated technical justification document. It is accepted that the area is poor for all mobile operators and that this limits the voice and mobile broadband services experienced. It is proposed that the mast will be designed to accommodate the three main operators to deploy improved voice and broadband services as standard. I note the coverage maps provided, see figures 4 and 5, which clearly show an improvement in service in the area as a result of the proposed development. I further note that in addition to the increased coverage area it is proposed to install enhanced 4G and 5G services. Based on the information attached to the initial planning application, the Applicants' Appeal Response submission and First Party Financial Contribution Appeal, I am satisfied that the Applicant has suitably demonstrated that the proposed development provides an improved service to customers who would not otherwise be able to avail an adequate mobile or broadband service. This includes local farms, businesses and residents within the

surrounding catchment area as well as road users on sections of the M9 Motorway and N10 National Secondary Road.

7.4.8. Having regard to

- a) the general arrangements regarding payment of development contributions and implementation of the scheme.
- b) the extent of existing telecommunications developments on the site.
- c) the nature and extent of existing and proposed telecommunications infrastructure proposals on the site.
- d) the exemption provisions on page 6 of the adopted Kilkenny County Development Contribution Scheme, 2016 – 2017, and
- e) the provisions of Circular Letter PL03/2018 by the Department of Housing, Planning and Local Government in relation to waivers for the development of masts, antennae, dishes and other apparatus or equipment being installed for telecommunications purposes,

It is my opinion that, in the event of a decision to grant permission being issued by the Commission, the financial contribution as set out under condition number 2 of permission granted under planning register reference number 2460490, is not justified. Therefore, it is my opinion that the provisions of the adopted development contributions scheme and of planning circular PL03/2018 have not been properly applied such that condition number 2, attached to planning register reference number 2460490, should be removed.

7.5. Other Matters

- *Misleading/ Inaccurate information*

7.5.1. I note the concerns raised by the Appellant in relation to the accuracy of some of the information presented. I further note that, as part of the Appeal submission, the Applicant acknowledges that some genuine mistakes may have been made in the information provided but they were not intentionally presented to mislead or confuse. I accept the Applicants' explanation and I am satisfied that the information before the Local Authority at the time of the decision was a fair, true and accurate representation of the proposed development.

8.0 AA Screening

- 8.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is not located within or adjacent to any European Site. The closest European Sites, part of the Natura 2000 Network, are the River Nore SPA, Site Code (004233) and the River Barrow and River Nore SAC (Site Code 002162) both located c. 2.6 kms to the south of the proposed development site. The proposed development comprises the construction of a 24 metre lattice telecommunications support structure and all associated site works.

Having considered the nature, scale and location of the proposed development, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.

The reason for this conclusion is as follows:

- The small-scale nature of the development.
- The location of the development in a serviced urban area, distance from European Sites, the urban nature of intervening habitats and the absence of ecological pathways to any European Site.

- 8.2. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

9.0 Water Framework Directive

- 9.1.1. The subject appeal site is located in the rural townland of Danesfort , County Kilkenny. The proposed development comprises the Construction of a 24m lattice telecommunications support structure and all associated site works.

The Ennisnag Stream 10 (River Waterbody Code: IE_SE_15E020700) is located c.951 metres to the south of the subject appeal site. The appeal site is also located within Clifden Northwest (EU_CD Code: IE_SE_G_161) which is the Ground waterbody underlying the site.

No water deterioration concerns were raised in the planning appeal.

I have assessed the proposed residential development and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

The reason for this conclusion is as follows:

- The small-scale nature of the proposed development.
- The location of the subject appeal site, distance to the nearest water body and lack of direct hydrological connections.

I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

10.0 Recommendation

10.1.1. I recommend that permission be REFUSED for the Construction of a 24 metre lattice telecommunications support structure and all associated site works.

11.0 Reasons and Considerations

1. Having regard to the government's guidelines on Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996) which state, inter alia, that fragile landscapes have to be treated sensitively, scenic views preserved, archaeological/geological sites and monuments and buildings of historical and architectural interest protected and sacred areas respected and that proximity to listed buildings, archaeological sites and other monuments should be avoided, it is considered that, notwithstanding the fact that the site is an existing utilities site, the proposed replacement 24 metre high mast is such that it will present a negative visual impact upon the character and setting of Protected Structure (RPS Ref. No. C451) and Recorded Monuments KK023-080 (Castle) and KK023-080001 (Designed Landscape) Landscape. The proposed development is therefore considered to be contrary to guidance provided in Section 10.4.1.4 of the Kilkenny County Development Plan, 2021 to 2027, wherein it stated to be the policy of the Council to have regard to the visual impact of the proposed equipment and access infrastructure on the natural or built environment, particularly in areas of heritage value and to have regard to the Telecommunications Antennae and Support Structures - Guidelines for Planning Authorities and Circular Letter PL 07/12. It is considered the proposed development would be contrary to government guidelines and the above stated policy and would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Frank O'Donnell
Planning Inspector

25th August 2025

Form 1 - EIA Pre-Screening

Case Reference	ACP-322496-25
Proposed Development Summary	Permission for the construction of a 24m lattice telecommunications support structure and all associated site works.
Development Address	Danesfort, County Kilkenny, County Kilkenny
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2. <input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	

<p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3)</p> <p><i>[Delete if not relevant]</i></p>
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p> <p><i>[Delete if not relevant]</i></p>

Inspector: _____ Date: _____

WFD IMPACT ASSESSMENT STAGE 1: SCREENING

Step 1: Nature of the Project, the Site and Locality

An Coimisiún Pleanála ref. no.	322496-25	Townland, address	Danesfort , County Kilkenny.
Description of project		Permission for the construction of a 24m lattice telecommunications support structure and all associated site works.	
Brief site description, relevant to WFD Screening,		The subject site is located in a rural area, has a small site area, stated to measure 0.009 hectares (90 sqm), and forms part of a larger field. The site is flat and the general area of is of little or no elevation with freely draining earths. The site is surrounded by well drained grassland with no drainage ditches. There are no apparent watercourses located on or immediately adjacent to the site.	
Proposed surface water details		Proposed surface water discharge/ treatment arrangements are not clearly specified but are not anticipated to be of great significance.	
Proposed water supply source & available capacity		Not Applicable – See Q. 20 of Application form	

Proposed wastewater treatment system & available capacity, other issues		Not Applicable – See Q. 20 of Application form				
Others?		N/a				
Step 2: Identification of relevant water bodies and Step 3: S-P-R connection						
Identified water body	Distance to (m)	Water body name(s) (code)	WFD Status	Risk of not achieving WFD Objective e.g.at risk, review, not at risk	Identified pressures on that water body	Pathway linkage to water feature (e.g. surface run-off, drainage, groundwater)
River Waterbody	951m	ENNISNAG STREAM_010 (IE_SE_15E020700)	Poor	At risk	Agriculture & Domestic Wastewater Treatment Systems (DWTS)	Not hydrologically connected to surface watercourse.

Groundwater waterbody	Underlying site	Clifden Northwest (IE_SE_G_161)	Good	Not at risk	No pressures	Free draining soil conditions.	
Step 4: Detailed description of any component of the development or activity that may cause a risk of not achieving the WFD Objectives having regard to the S-P-R linkage.							
CONSTRUCTION PHASE							
No.	Component	Water body receptor (EPA Code)	Pathway (existing and new)	Potential for impact/ what is the possible impact	Screening Stage Mitigation Measure*	Residual Risk (yes/no) Detail	Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or 'uncertain' proceed to Stage 2.

1.	Surface	ENNISNAG STREAM_010 (IE_SE_15E020700)	None	None	None	No	Screened out
2.	Ground	Clifden Northwest (IE_SE_G_161)	Drainage	Hydrocarbon Spillages	Standard Construction Measures / Conditions	No	Screened out
OPERATIONAL PHASE							
3.	Surface	ENNISNAG STREAM_010 (IE_SE_15E020700)	None	None	None	No	Screened out
4.	Ground	Clifden Northwest (IE_SE_G_161)	None	None	None	No	Screened out
DECOMMISSIONING PHASE							
5.	NA						