



An
Bord
Pleanála

Inspector's Report ABP 305114-19

Development	Overground communications infrastructure: fifteen Metres high street pole to support telecommunications mast. (Section 254 License.)
Location	Claureen Roundabout, Ennis, Co. Clare.
Planning Authority	Clare County Council
P. A. Reg. Ref.	LA1912.
Applicant	Cignel Ltd.
Type of Application	Section 254 License.
Decision	Grant License (3 years)
Type of Appeal	Third Party
Appellant	Councillor Mary Howard.
Date of Site Inspection	1st October, 2019
Inspector	Jane Dennehy.

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1.0 Site Location and Description

- 1.1. The site location is within the grass verge behind the public footpath and the west of a public lighting column at the Claureen roundabout on the R 352 to the east of N85 (Lahinch Road) at Ennis. The lands to the rear, fall away unevenly from the road edge and are covered in rough gorse and some trees. The area is primarily residential although some commercial development is located adjacent to the roundabout to the north east and in the environs.

2.0 Proposed Development

- 2.1. An application was lodged with the planning authority by Cignel Infrastructure on 7th March 2019 for the grant of a License for erection of communications infrastructure in accordance with provisions of section 254 of the Planning and Development Act, 2000, as amended. The proposed infrastructure development comprises erection of fifteen metres high and 324 mm diam. “street pole” on a concrete foundation in a galvanised finish with 2G, 3G 4G and 5G antenna mounted at the top three metres, shrouded in a 922 mm sheath in similar finish to the galvanised finish for the pole and, two equipment cabinets.
- 2.2. According to the application submission the proposed development will resolve an existing deficiency in coverage in that the immediate environs is a blackspot within the network and the infrastructure proposed will be in compliance with international standards for non-ionising radiation.

3.0 Decision

3.1. Decision

By order dated, 4th July 2019, the planning authority decided to grant a License for the proposed communications infrastructure. Under condition No 1 (b) the duration of the grant of the license is restricted to three years of the date of the grant of permission, with the option being open for a further license to be issued. Standard conditions relating to road opening, site clearance and reinstatement are also included.

3.2. Planning Authority Reports

- 3.2.1. The reports of the planning officer and of the Ennis Municipal District Office indicated acceptance of the application proposals. The planning officer acknowledges the lack of inclusion of telecommunications infrastructure within in the zoning matrix for the “open space” zoning objective, the standalone nature of the proposed structure and considered that the amenity potential of the open space at the roadside edge of which the location is would not be inhibited that road safety would be unaffected and, that regard should be given to the CDP policy objective (CDP 8.44) for facilitation of communication infrastructure development.
- 3.2.2. The planning officer’s report also notes a prior refusal of permission under P. A. Reg. Ref 12-21013 to Vodafone Ireland for a 24 metres high support structure, antennas equipment containers within a fenced off compound at an elevated site some distance to the west of the site location for the current application for a License under section 254 of the Act. The reasoning related to adverse visual impact over a wide area within the landscape and conflict with policy objectives within the Ennis and Environs Development Plan, 2008-2014, the zoning objectives for the location and for the environs and material conflict with the CDP.

3.3. Development Plan

- 3.3.1. According to the Clare County Development Plan, 2017-2022, the site location comes within an area zoned “Open Space” and under Objective CDP 8.44 it is an objective of the planning authority to facilitate communications infrastructure development at appropriate locations in accordance with the DOEHLG Section 28 Statutory Guidelines; *“Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities*, 1996, as updated by circular letter PL 07/12 in 2012.

4.0 The Appeal

4.1. Grounds of Appeal

- 4.1.1. The decision to grant the License was referred to the Board for review by Councillor Mary Howard of Claureen House on her own behalf on 8th August, 2019. A photograph, of the view towards the site location from a bedroom window at Councillor Howard's property is included with the submission.
- 4.1.2. It is claimed in the submission that section 254 of the Act was inappropriately applied in that its provisions are not applicable to infrastructure development. It sets dangerous precedent for a fifteen metres high mast to be considered as exempt development. If the site selected was not located on public land, the proposal would have been subject to the full rigours of the planning process.
- 4.1.3. According to the submission,
- The installation would be less than twenty metres from the front door of Councillor Howard's residence, and she is deprived of the rights to under the Planning Acts.
 - The proposed mast will dwarf all other buildings in the area.
 - There is a considerable amount of other vacant land which is more suitable.
 - The mast gives rise to concerns as to impact on public health and Councillor Howard's health.
 - It is not clear as to the datum the height is measured from. The selected location is on high ground and if measured from the level of the road would be two metres higher.
 - There is no evidence that an assessment has been undertaken of the impact of an access off the busy roundabout for construction and maintenance.
 - There is no evidence that consideration was given to co-location on existing masts.
 - If cameras are erected on the mast, the privacy of Councillor Howards property could be affected.

4.2. Applicant Response

4.2.1. A submission was received from CMC consultants on behalf of the applicant on 9th September, 2019. According to the submission:

- The applicant is entitled to apply for a license under Section 254 ee of the Act for installation of “*overground electronic communications infrastructure and associated physical infrastructure*” on public land, as inserted by the Communications Regulations Act, in 2002 (20/2002), later updated by S254 and the European Union (Reduction of Cost of Deploying High Speed Public Communications Networks) Regulations (SI No 391 of 2016) Furthermore section 254 (5) requires a planning authority to the regard to four considerations which are requirements of the planning process and a thorough assessment was undertaken by the planning authority as evidenced in the planning officer report.
- There is no doubt that there is parity in assessment of a section 254 license application and a planning application under section 35 of the Act. It is established in it that the proposed development is low level infrastructure not resulting in adverse impact on amenity but required to fill a local blackspot in coverage. The planning authority comprehensively and with due diligence assessed the proposal and determined that a temporary conditional Licence could be issued subject to the conditions that were attached.
- There is no prohibition on referring a License application to the Board in that Section 254 (6) provides the opportunity for any party to appeal the decision to grant a License.
- The pole height is to be fifteen metres above the ground as indicated in the application.
- With regard to access off the public road for construction and maintenance, The Ennis Municipal Office has indicated in its report that it approves the installation. Liaison with the Roads engineer established the suitability of the location including sufficient space for construction work, parking during maintenance visits can take place at the petrol station, and the conditions attached in relation to a road opening license, incorporating health and safety

and traffic management plans. The roundabout and approach to it are in a low speed zone.

- The best solution to the blackspot in coverage at the urban location is low level localised infrastructure. A tailored search ring, specific to the elimination of the black spot was used to respond to increasing demand. It identified the location and there was no alternative infrastructure in the area capable of meeting the required network requirements.
- It is confirmed that there is no intention to install a camera at the installation and it would be in material conflict with the application and conditions attached.
- The distance to Councillor Howards house from the site location is well in excess of twenty metres. Claureen House and the closest houses to the north are circa fifty plus metres from the site. The structure is typical to that used on roadsides and roundabouts, it will not be higher than existing lighting structures and will not dwarf buildings in the area. The proposed development meets the “last resort” requirements set out in the Guidelines the Guidelines allowing for selection of locations in residential areas.
- The applicant is willing, in conjunction with the local authority to provide landscaping for the gap in the existing tree line at the rear of the site location so that views from the houses to the north can be ameliorated.
- The applicant rejects the contention as to potential precedent for granting of licenses for wide ranging communications infrastructure development. Having regard to CDP, strategic guidance and, the recommendations in, *“Consideration of opportunities to Potential Location of Overground Telecommunications Infrastructure on public roads”*. (2015) (The Green Book) precedent establishes a principle or rule in interpretation of legislation. The intent under section 254 is to provide for full planning assessment and, the intent under 254 (7) on exempt development and installation of communications infrastructure in accordance with a License is clear. It is silent on preferred heights, but it does not allow for inappropriate development to be licensed. Unsuitable development of any design or height would not receive a license and, development is only considered under section 254 (7) if

it has a license. Reference is made to a refusal of permission for the 24 metres high mast structure under Reg. Ref. 12. 21013. (Details in planning history in section 4.) Design technology has moved on and the current proposal for slimline poles as an alternative to a largescale mast is a more modern, low impact solution for enhancing the network. However, it is acknowledged that each proposal is not necessarily exempt as a comprehensive planning assessment would be required to establish that it can be considered as exempt and appropriate for a grant of a license.

- With regard to health implications, it is suggested that peer reviewed research be consulted as it determines that exposure to electromagnetic fields does not represent health risk. The issue is contended to be *ultra vires* the Board's remit having regard to Circular PL 07-12 and the adopted safety guidelines of COMReg.
- The submission includes a description of Cignal as a provider committed to the Irish market and its functions and commitment to co-location.

It is requested that the planning authority decision to consider the application for License under section 254 and to grant the license be upheld.

4.3. **Further Submission of Councillor Howard.**

4.4. A submission was received on 4th October, 2019. Councillor Howard reiterates her objections to the application for a license under section 254 of the Act instead of a planning application under section 35 of the Act, drawing in particular, on the lack of public notification and participation.

4.5. **Planning Authority Response**

A submission was received on 11th September, 2019 it is stated that, in accordance with the provisions of section 254, the submission lodged by the appellant party could not be taken into consideration in connection with consideration of the application for the License. However, it is requested that the planning authority's assessment be considered in determining a decision on the application.

5.0 **Assessment**

6.0 The review of the application for the license and the third-party objections can be considered below under the following headings:

- Application for a License - Section 254 of the Planning and Development Act, 2000 as amended.
- Precedent.
- Impact on the amenities of the surrounding environs.
- Justification for the proposed infrastructure.
- Safety of access from the public road network for construction and maintenance purposes.
- Impact on Public Health.
- Environmental Impact assessment
- Appropriate Assessment.

6.1. **Application for a License – Section 254 of the Planning and Development Act, 2000 as amended.**

6.1.1. The underlying issue is as to whether the application for and assessment of the proposal by the planning authority by way of an application for a license under section 254 of the Act as opposed to a planning application under section 35 of the Act, is acceptable. It is considered that that it is demonstrated satisfactorily in the applicant's submission in connection with the appeal that an application for a license and determination of the decision to grant the license is appropriate and in accordance with the provisions of section 254 of the Act having regard to the selected location within the public realm on publicly owned lands at the roadside edge and, having regard to the nature and design of the subject communications infrastructure.

6.1.2. Furthermore, it is considered that the applicant's agent has clearly established that the significant advances in technology and design have resulted in the availability of "low impact", that is, far less visually intrusive support structures and equipment for

the network. The reference to proposals in the prior unsuccessful application lodged in 2012 in this regard is noted in this regard in demonstrating the acceptability of the application of the provisions of section 254 to consideration of the proposal. The conditions attached restriction the duration of the license and providing for the requirements of the municipal authority in regard to the public road are appropriate and reasonable having regard to consideration for the interests of the proper planning and sustainable development.

6.2. Precedent

- 6.2.1. Councillor Howard's contentions as to her concerns about potential for precedent for further consideration of communications infrastructure development through applications for a license under section 254, (eliminating public notice requirements and restricting third party participation to post decision appeals to the Board), are understandable. However, it is clearly demonstrated in the response submission from the applicant's agent that for development to come within the provisions of section 254 (7) of the Act, (as amended) the subject communications infrastructure development must accord with specific criteria with regard to location and potential impact in order for the development to be exempt from a requirement for planning permission, notwithstanding the lack of limitations on support structure height. It is agreed that modern technology has provided for design standards that are more amenable to coming within the scope for a License application under Section 254.

6.3. Impact on the amenities of the surrounding environs.

- 6.3.1. It is considered that the selected site location has capacity to accept the proposed pole, antenna and associated equipment. The surrounding landscape is not sensitive the immediate environs being that of a busy roundabout serving the national and regional road network to the west of the town, the town centre and suburban residential and commercial development. The structure, in combination, with existing public lighting poles do not have significant impact or alteration to the existing views along the public roads and towards the site location in particular from the surrounding residential developments, individual dwellings and the public realm. While the structure would come within and would represent a change in the character of the views towards the public realm from Councillor Howard's property, it

is not accepted that any undue adverse impacts, from a planning perspective would arise should the license be granted.

6.3.2. In this regard it is agreed with the applicant's agent that the separation distance between Claureen House and the site location would be greater than the estimate of twenty metres indicated in the submission of Councillor Howard.

6.3.3. In addition, the willingness of the applicant to provide additional tree planting to screen the views from houses to the north is acknowledged but it is noted that these lands lie outside the area of the application site, but the applicant and the planning authority can consider these matters.

7.0 It is considered that Councillor Howard's concerns as the lack of clarity in the submitted plans as to the precise height, once erected of the pole can be addressed by condition for the height to be measured from the level of the road. This allows for ease of verification of the height at a future date, if required. It is noted in this regard that it is stated in the response of the applicant that the height would be measured from the ground level. A condition can be included for the purposes of clarity for the measurement to be taken from the adjacent road level.

8.0 Safety of access from the public road network for construction and maintenance purposes.

9.0 The site location for proposed structure does not impinge on or overlap the public road which is within a low maximum speed zone, although access for construction and maintenance purposes from the public road would be required. Subject to obtaining a Roads Opening License, and complying with any requirements therein, adherence to the Green Book guidance and standards, the Ennis Municipal Office having indicated acceptance of the proposal, it is considered that no issues would arise as to conflict with movements and the safety of road users.

10.0 Impact on Public Health.

11.0 Subject to the proposed infrastructure being installed, operated and maintained so that there is compliance with the international standards relating to emission of non-ionising radiation, the safety standards under COMReg and relevant guidance,

standards and legislation no issues with regard to risk to public health from a planning perspective should arise.

11.1.1. Justification for the proposed infrastructure.

11.1.2. There is a satisfactory explanation within the submission provided by the applicant as to the lack of scope for colocation of existing infrastructure and the purpose of the proposed installation in responding to an existing blackspot in network coverage in the area and with regard to site selection and potential impact on the amenities of the environs.

11.2. Environmental Impact Assessment Screening.

11.2.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

11.3. Appropriate Assessment Screening.

11.3.1. Having regard to the nature of the proposed development and, to the brownfield site in a serviced inner suburban area, no appropriate assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

12.0 Recommendation

12.1. In view of the foregoing, it is recommended that the planning authority decision to grant the License, subject to limitation to a three-year period further to which it would be open to consideration for a further License, be upheld. A draft order follows.

13.0 Reasons and Considerations

13.1.1. Having regard to the provisions of section 254 of the Planning and Development Act, 2000, as amended, national, regional and local policy objectives, as represented in the Clare County Development Plan, 2017-2023 Objective CDP 8.44., according to which it is an objective of the planning authority to facilitate communications

infrastructure development at appropriate locations in accordance with the DOEHLG Section 28 Statutory Guidelines; “*Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities*, 1996, as updated by circular letter PL 07/12 in 2012 it is considered that subject to compliance with the conditions set out below, the proposed development would not be visually intrusive or seriously injurious to the amenities of the area or the residential amenities of properties in the vicinity, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health and, would be in accordance with the proper planning and sustainable development of the area.

14.0 Conditions.

1. The license shall be valid for three years from the date of this order. The telecommunications structure and related ancillary structures including any access arrangements shall then be removed and the site lands shall be reinstated on removal of the telecommunications structure and ancillary structures unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period

Reason: To enable the impact of the development to be re-assessed, having regard to changes in technology and design during the specified period.

2. Prior to the commencement of development, a road opening license shall be obtained by the applicant and its costs shall be paid to the planning authority, full details of which shall be subject to the written agreement of the planning authority .

Reason. In the interest of pedestrian and vehicular safety, clarity and orderly development.

3. The transmitter power output, antenna type and mounting configuration shall be in accordance with the details submitted with this application for the License. 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.

Reason: 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.

4. Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.

Reason: In the interest of public health and to prevent flooding.

5. A low intensity fixed red obstacle light shall be fitted as close to the top of the mast 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.

Reason: In the interest of public safety.

6. Details of the proposed colour scheme for the pole, antennas equipment containers and perimeter fencing shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of the visual amenities of the area.

7. Landscaping of the site shall be carried out in accordance with a landscaping scheme which shall be submitted to and agreed in writing with planning authority prior to the commencement of development.

Reason: In the interest of the visual amenities of the area.

8. No advertisement or advertisement structure shall be erected or displayed on the proposed structure or within the curtilage of the site without a prior grant of planning permission.

Reason: In the interest of the visual amenities of the area.

Jane Dennehy

Senior Planning Inspector.
13th December, 2019