



An  
Bord  
Pleanála

## Inspector's Report ABP-302441-18

---

### Question

Whether works consisting of the erection of a telecommunications mast on Monkstown Road is or is not development and is or is not exempted development.

### Location

Monkstown Road at the junction of Alma Road & Montpelier Parade

### Declaration

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

Ref. 8118

Planning Authority Decision

No declaration issued

Applicant for Declaration

Dun Laoghaire Rathdown Co. Co.

### Referral

Referred by

Dun Laoghaire Rathdown Co. Co.

Owner

Signal Infrastructure Ltd.

Observer(s)

John Ryan and Angela O' Floinn

Date of Site Inspection

6<sup>th</sup> November 2018

Inspector

Erika Casey

## 1.0 Site Location and Description

- 1.1. The lamppost structure is located on the Monkstown Road in close proximity to the junction with Alma Road. Development in the vicinity is primarily residential. The lamppost structure is located in a small area of incidental open space adjacent to the public footpath. It is located in close proximity to Mountpellier Parade, a terrace of three storey over basement period properties.
- 1.2. The proposed development comprises telecommunications equipment and antennas installed on a lamppost with internal cable continuing underground to adjacent exchange cabinets. Six antennas are facilitated behind detachable shrouds, providing mobile and high speed broadband services for two operators. The antennas are painted to mimic the steel lamppost and are located above and below the lantern on the lamppost. They are connected via underground ducting to two equipment cabinets, abutting an existing wall, at a distance of 30 metres from the lamppost. The overall height of the structure is 12.5 metres. The equipment cabinets have a height of 1.45 metres, a width of 1.3 metres and a depth of 0.72m.

## 2.0 The Question

- 2.1. A declaration on “*whether works consisting of the erection of a telecommunication mast on Monkstown Road is or is not development and is or is not exempted development*” was requested by John Ryan and Angela O’ Floinn to Dun Laoghaire Rathdown County Council on the 3<sup>rd</sup> of August 2018. Under Section 5 (4) of the Planning and Development Act 2000, as amended, Dun Laoghaire Rathdown County Council have referred this request to An Bord Pleanála on the 29<sup>th</sup> of August 2018.
- 2.2. Noting the information on file and from observations on site, it is considered appropriate that the question referred to the Board be reworded as follows:  
  
*“Whether the attachment of telecommunications antennae to a lamppost supporting structure and erection of ancillary equipment is or is not development and is or is not exempted development.”*

## 3.0 Planning Authority Declaration

### 3.1 Declaration

3.1.1 The Planning Authority did not issue a declaration and the question was referred directly by the Planning Authority to the Board for a decision under the provisions of Section 5 (4) of the Planning and Development Act 2000, as amended.

### 3.2 Planning Authority Reports

#### 3.2.1 Planning Reports

- None on file.

#### 3.2.2 Other Technical Reports

- None on file.

## 4.0 Planning History

### **Planning Authority Reference D15A/0373/Appeal Reference PL 06D.245357**

4.1 Replacement of an existing 10m street light with a 13m streetworks pole incorporating a street light, at the existing height of 10m, with telecommunications antenna enclosed by a shroud above, maximum height not to exceed 13m above adjacent ground level, with associated telecommunications equipment cabinet, power distribution board and all associated works and development at Monkstown Road, (adj. to Montpellier Parade), Monkstown, Co. Dublin.

4.2 Permission was refused by the Board in December 2015 for 2 no. reasons:

1. *Having regard to the policies set out in the current Development Plan for the area, and in particular those set out in paragraph 16.14 and Table 6.1 of this Plan, it is considered that the applicant has not demonstrated, to the satisfaction of An Bord Pleanála, that the proposed development would comply with the criteria set out in the Plan for the provision of new telecommunications structures, nor satisfactorily established that there are not more suitable locations to meet telecommunications coverage needs in the general area, including potential co-location with other operators on already established*

*telecommunications structures, or through the use of existing traffic-related infrastructure. The proposed development would, therefore, contravene the provisions of the Development Plan and would be contrary to the proper planning and sustainable development of the area.*

2. *Having regard to the nature, design and height of the proposed development, and its location set within Monkstown Architectural Conservation Area and in close proximity to a number of Protected Structures within the Georgian Terraces at Montpelier Parade, it is considered that the proposed development would form a visually intrusive feature which would detract from the character and setting of the protected structures within Montpelier Parade and would adversely affect the character of Monkstown Architectural Conservation Area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”*

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1 The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is located in an area zoned Objective A: *To protect and-or improve residential amenity*. Public services are permitted in principle under this zoning objective. Public services are defined under the plan as *“all service installations necessarily required by electricity, gas, telephone, radio, television, water, drainage and other statutory undertakers.”* The location of the structure is adjacent to but outside the Monkstown Architectural Conservation Area.

5.1.2 Relevant policies and objectives of the plan include:

#### **Policy E128 Telecommunications Infrastructure**

*“It is Council policy to promote and facilitate the provision of an appropriate telecommunications infrastructure, including broadband connectivity and other technologies, within the County.”*

## 5.2 **Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (DoE 1996)**

5.2.1 The appropriate national guidelines for consideration in relation to the proposed development are Guidelines for Planning Authorities prepared by the Department of the Environment, July 1996:

## 5.3 **Natural Heritage Designations**

5.3.1 The South Dublin Bay SAC and the South Dublin Bay and River Tolka Estuary SPA are located c. 0.5km to the north east of the site.

### **Appropriate Assessment**

5.3.2 Having regard to the nature and extent of the development within an established urban area, and the distance of the site to nearest European site, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 6.0 **The Referral**

### 6.1. **Referrer's Case**

- The Planning Authority note in their application to the Board that to date they have considered the structure to be a lamppost with telecommunications antennae attached to it.
- The documentation submitted by the Planning Authority includes the original referral made to them by John Ryan and Angela O' Floinn. The principal points raised in the referral can be summarised as follows:
  - Consider that the works do not come under Section 4(1) (f) of the Planning Acts. There is no contract in place between Cignal Infrastructure and DLRCC for the provision of this telecommunication mast, nor is the mast development carried out for the benefit of the Council. There is no satisfactory evidence of a contract. It is considered that Cignal Infrastructure is not a statutory undertaker.

- The mast does not constitute exempted development under Class 31 of the Planning and Development Regulations as it exceeds the height threshold of 10 metres.
- Consider the equipment is not fixed to an existing lamppost, rather the existing lamppost was removed and replaced by a new taller and wider telecommunication mast to which a new street lamp was applied. Question the provisions under which the lamppost was erected.
- The mast adjoins an ACA and several protected structures and has a direct negative visual impact on the area. Consider that the development directly impacts the curtilage of nearby protected structures and is contrary to the County Development Plan policy regarding telecommunications structures and the guidance set out in the Planning Guidelines for Telecommunications Antennae and Support Structures 1996. Note that permission was previously refused (Planning Authority Reference D15A/0373) for a similar structure on an adjoining stanchion on conservation grounds. The development will set an undesirable precedent and will have a significant adverse visual impact particularly on the vista of Mountpellier Parade and Monkstown Road.
- Consider that Cignal Infrastructure Ltd. did not comply with the requirement to notify the Planning Authority prior to the installation in accordance with the requirements of the regulations.
- State that the Council should consider the option of referring the issue directly to the Board to adjudicate.

## 6.2. Owner Response

### **Cignal Infrastructure Ltd.**

- Consider that the installation of telecommunications antennas on an existing lamppost in Monkstown and the installation of ancillary cabinets alongside is exempted development under Class 31 of the Planning and Development Regulations 2001 (as amended).

- Note that previous enforcement case regarding the development has been closed. Correspondence from the Council's Enforcement Section dated March 2018 has confirmed that the development *"is exempt from the requirement to seek or obtain planning permission."*
- The development has been installed under Class 31 (k) of the Planning and Development Regulations and the Local Authority considered that the development complied with the conditions and limitation of this class.
- Note that under the Planning and Development (Amendment) (No. 3) Regulations 2018, that Class 31 (k) was amended to create Class 31 (l) for the use of existing lampposts. State however, that the development was carried out under the auspices of Class 31 as it existed in 2017 and as such, the recent amendment is considered irrelevant. Note however, that the attachment of antennas to a lamppost under exemption is still permitted, albeit with changes to the dimensions of the antennas.
- The subject development should not be referred to as a telecommunications mast. It is better described as the installation of an antenna to an existing support structure, a lamppost which is authorised by means of exempted development under Class 31 (k) (ii). While installing a lattice structure, such as a mast, would require planning permission, telecommunications equipment such as the antennas is exempted development. Note that Class 31 (b) which was introduced in 2018, post installation of the antennas to the lighting structure in Monkstown is not relied upon.
- Note that the original referrers claim that the lamppost was a replacement structure and as such does not qualify as an existing structure under Class 31 (k). Whilst the lamppost was replaced, the replacement design is of no consequence to its function. The antennas attached to the structure are subsidiary to the structure's primary function as a lamppost, irrespective of its design. Furthermore, note that the lamppost was insitu at the time the antennas were installed and that if the antennas were ever removed, that it would still function as a lamppost.
- Notes that the position of the lighting structure is outside the ACA demarcation line and thus there are no Article 9 restrictions present on the site. The

assessment of Class 31 Exempted Development should not be treated differently to an assessment of any other exemption at this location, if the concept of an equitable planning system is to be upheld.

- The installation was sensitively designed to lessen its visual impact on the area with particular regard being paid to entirely screening the antennas behind radio friendly shrouds inside the lamppost. All cables are encased in the lamppost. The only protrusion on the lamppost is the lantern. The installation, which supports two Telecom Operators, replaces a requirement for a mast type structure in the area and as such is wholly in line with the telecommunications objectives of the State and the Local Authority.
- In any event note, that Development Plan an ACA objectives are not relevant to an assessment of this case as these are not generally applied to any class of exempted development. The exclusions detailed in Article 9 of the Regulations are considered sufficient to protect designated areas from improper use of exempted development.
- Cignal Infrastructure Ltd. is authorised by ComReg to provide electronic communications networks and services, for the establishment of over ground electronic communications infrastructure and any associated physical infrastructure. The occupants of the structure are both licenced operators in the state (Vodafone and eir Mobile). Both Cignal Infrastructure Ltd. and the occupants are, therefore, statutory undertakers.
- State that the notification of the developer's intention to install antennas on the lamppost was issued to the Local Authority in 2014. There were also several applications for licences issued during the pre-construction period. The equipment was installed with the full knowledge and approval of the Local Authority in compliance with Class 31.
- The cabinets are less than 2 cubic metres and are exempt under Class 31 (f).
- The Local Authority's determination that the installation is compliant with a different exemption i.e. Section 4 (a) (f) is of no consequence to the ability to rely on Class 31 in relation to the equipment installed on and adjacent to the lamppost, providing that the installation is in compliance with the conditions and limitations of the Regulations.



- It is internationally recognised that low impact street solutions are the best way to deliver next generation broadband to local users. The recent amendments to Class 31 were specifically worded to facilitate the location of street solutions across the country. These changes were implemented as a result of the Programme for a Partnership Government, which established a Mobile Phone and Broadband Taskforce, specifically to address Ireland's poor mobile and broadband coverage. The Taskforce has influenced changes in the legislation in order to facilitate the deployment of next generation services on a variety of infrastructure, including state facilities and any action to remove an authorised installation, would be contrary to these objectives.

### 6.3. Further Responses

#### **John Ryan and Angela O' Floinn**

- Signal Infrastructure did not have the necessary licence or authority to take down the existing lamp post and erect this new telecommunication structure. Signal is not a statutory undertaker.
- The development by its detail, scale and nature does not meet the requirements for exempted development as allowed for in the Planning Acts and Regulations.
- The development is inconsistent with the County Development Plan. It will have a detrimental impact on an historic residential neighbourhood.
- The development will set an undesirable precedent.

#### **Dun Laoghaire Rathdown Co. Co. (23.10.2018)**

- No further comment.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

**Section 2 (1)** of the Act provides the following definitions:

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...*

*“structure” means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined.”*

**Section 2 (1)** of the Act defines a statutory undertaker as:

*“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—*

*(a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,*

*(b) provide, or carry out works for the provision of, gas, electricity or **telecommunications services**, or*

*(c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;”*

**Section 3(1)** of the Act states the following in respect of ‘development’:

*“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.”*

**Section 4 (1)** sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

**Section 4 (2)(a)** of the Act enables certain classes of development to be deemed exempted development by way of regulation.

- 7.1.2 It is noted that reference is made by the original referrer (John Ryan and Angela O’ Floinn) that correspondence from Dun Laoghaire Rathdown Enforcement Department indicated that it was considered the development was exempt under the provisions of Section 4(1) (f) of the Planning and Development Act 2000. This section of the Act states:

*“development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity”.*

- 7.1.3 The referrer made a detailed submission on this issue to the Council setting out that in their view, the provisions of Section 4(1) (f) of the Act are not applicable to the subject case. The submission by Cignal Infrastructure Ltd. in response to the referral notes that in their view,

the development is exempt under the provisions of Section 31 of the Planning and Development Regulations. Having reviewed the documentation on file, I am satisfied that it is this provision of the legislation rather than Section 4 (1) (f) of the Act that is the most pertinent when considering the subject referral.

7.1.4 I also note that in their submission dated the 25<sup>th</sup> of October 2018, their original referrers state that the development falls within the category of overground telecommunications infrastructure and can only take place subject to a license under section 254 of the Planning and Development Act 2000. It is alleged that Cignal have not established whether the development was erected in accordance with the mandatory licensing requirement. I consider this issue however, is not pertinent to a determination of whether the subject lightpost and telecommunications antennae is development and whether it is or is not exempted development and is outside the scope of this assessment. The requirement to obtain a license under section 254 of the Act is not a predetermining factor that planning permission is required.

## 7.2. **Planning and Development Regulations, 2001**

**Article 6(1)**, subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with certain conditions and limitations.

**Article 9 (1)** of the regulations sets out various restrictions on works that would otherwise be exempted development under Article 6. Subsection (xii) states the following restriction:

*“further to the provisions of section 82 of the Act, consists of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.”*

7.2.1 The Board should be aware that the Planning and Development (Amendment) (No. 3) Regulations 2018 made a number of amendments regarding aspects of Class 31 relating to exemptions from the requirement to obtain planning permission for certain works undertaken by a statutory undertaker authorised to provide a

telecommunications service. This included amendments relevant to the exemptions pertaining to small cell antennae attached to lampposts. It is noted however, that the subject telecommunications structure was erected in 2017 and thus these regulations adopted in February 2018 are not applicable. The operative regulations in place at the time were as follows:

**Class 31 of Part 1 of Schedule 2:** The relevant sub-paragraphs are (f) and (k) and these state the following:-

| <b>Column 1<br/>(1) Description of Development</b>  | <b>Column 2<br/>(2) Conditions and Limitations</b>   |
|---|--|
| <i>The carrying out by a statutory undertaker authorised to provide telecommunications service of development consisting of the provision of—</i><br>(f) Cabinets forming part of a telecommunications system   | The volume above the ground level of any such cabinet shall not exceed 2 cubic metres measured externally.   |
| <i>The carrying out by a statutory undertaker authorised to provide telecommunications service of development consisting of the provision of—</i><br>(k) Antennae attached to the following existing structures -<br>(i) public or commercial buildings (other than education facilities, childcare facilities or hospitals) by way of attachment to roofs, facades, chimneys, chimney pots or vent pipes;<br>(ii) telegraph poles, <b>lamp posts</b> , flag poles, CCTV poles;<br>(iii) electricity pylons | 1. The antenna shall be attached directly to the structure (other than a structure with a flat roof) and not by way of a supporting fixture.<br>5. The planning authority in whose functional area the structure on which the antennae will be attached is situated shall be notified by the statutory undertaker in writing of the proposed location of any such structure at least four weeks before such attachment.<br>6. The field strength of any such antenna shall not result in the field strength of the non-ionising radiation emission from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulation. |

**Note:** The other “Conditions and Limitations” i.e. Nos. 2-4 omitted in Column 2 above relate to buildings and chimneys, for example, and are not relevant to this Referral.

### 7.3. Other Similar Section 5 Declarations

#### **RL2271**

7.3.1 An Bord Pleanála determined that the placing of antennae on existing floodlight columns is development and is exempted development at Edenmore Sports Ground, Edenmore Park, Dublin 5.

#### **RL2255**

7.3.2 Referral relating as to whether the erection of antennae and ancillary equipment on a lattice type flood lighting pylon at Oriel Park, Carrick Road, Dundalk, County Louth is or is not development or is or is not exempted development. The Bord concluded that the erection of antennae on a lattice type flood lighting pylon would generally come within the scope of the exempted development provisions of class 31 (k) of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, and (b) in the absence of any evidence that the conditions and limitations of paragraph 5 of Column 2 of Class 31 (k) of the said Regulations had been met, it was considered that the said exempted development provisions of Class 31 (k) cannot be availed of. Therefore, An Bord Pleanála, determined that the said erection of antennae and ancillary equipment on a lattice type flood lighting pylon at Oriel Park, Carrick Road, Dundalk, County Louth is development and is not exempted development.

### **RL2829**

7.3.3 The Board determined that the attachment of telecommunications antennas (panel and dish type) to two 18 metres high floodlight columns and the erection of ancillary equipment at Wicklow Rovers Football Pitch, Whitegates, Dublin Road, Wicklow is development and is exempted development.

## **8.0 Assessment**

### **8.1 Preliminary Matters**

8.1.1 It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the subject lamppost and telecommunications antennas but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

### **8.2 Is or is not development**

8.2.1 Having regard to the definitions of 'development' and 'works', as set out under Sections 3(1) and 2(1) respectively of the Planning and Development Act 2000, as amended, I consider that the works involved are such that the fixing of antennae to a lamppost, together with the installation of the ancillary equipment constitute development within the meaning of the Act. As such it constitutes development. Therefore, it is my opinion that the remaining question in this case is whether or not the proposed works are exempted development.

### 8.3 Is or is not exempted development

- 8.3.1 In considering Class 31 of Part 1 of Schedule 2, one must first consider whether the developer – Cignal Infrastructure Ltd. is a statutory undertaker for the purposes of the regulations.
- 8.3.2 It is clarified in the response to the referral by Cignal, that telecommunication rights are controlled by the compliance regulator ComReg which issues general authorisation to carry out works for the provision of telecommunications under license. Cignal Infrastructure Ltd. were authorised by ComReg to provide Electronic Communications Networks and Services, for the establishment of over ground electronic communications infrastructure and any associated physical infrastructure in 2016. A copy of their license is appended to their response. It is also noted that the occupants of the structure are both licensed operators in the state – namely Vodaphone and eir Mobile. Having regard to the information submitted, I am satisfied that both Cignal Infrastructure Ltd. and the occupants are statutory undertakers.
- 8.3.3 **(f) Cabinets forming part of a telecommunications system:** The subject development includes 2 equipment cabinets that are connected to the lamppost via underground ducting, some 30 metres away. I consider that the cabinets would come within the scope of Class 31(f), as they are erected by a statutory undertaker authorised to provide a telecommunications service and are an integral and necessary part of the telecommunication system. In relation to the sole condition and limitation of this class, I am satisfied that the volume above ground level of each of the cabinets would not exceed 2 cubic metres, and that, therefore, this condition and limitation is complied with.
- 8.3.4 I note that the original referrer contends (submission dated 25.10.20218) that the underground cables from the lamppost to the cabinets are not exempted development. I consider however, such underground cabling to be exempt under the provisions of Class 31 (a) of the Regulations which state:
- “The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of*
- (a) underground telecommunications structures to other underground telecommunications works (including the laying of mains and cables and the installation underground of any apparatus or equipment).”*

- 8.3.5 **(K) Antennae attached to the following existing structures - (ii) lamp posts:** This issue has been contested by the original referrer who state that as a new lamp post was erected, that it does not constitute an “existing structure”. The developer in their response have argued that street lighting can comprise a variety of structures and a single area can have several design solutions. It is acknowledged that the previous lamppost at this location was replaced but that the replacement design is of no consequence to its function. It is stated that the antennas attached to the structure are subsidiary to its primary function as a lamppost. It will still operate as a lamppost irrespective of the antennas. It notes that Class 31 only requires the structure to be existing at the time the antennas are attached.
- 8.3.6 It is evident that the original lamppost at this location was replaced with a replicate light structure that contained technical elements capable of facilitating enhanced wireless connectivity to the area. The design of the lamppost is broadly similar to others in the vicinity. Whilst I note the lamppost was replaced in late 2017 and that the design of the lamppost has been amended from that previously insitu, I am satisfied that there was always a lamppost at this location. I am satisfied that planning permission would not have been required in itself for a replacement lamppost. I note the developer’s statement that the lamppost was insitu at the time the antennas were attached to it and there is no evidence to disprove this. This issue has not been contested by the Planning Authority who state in their correspondence that they view the development as a lamppost with telecommunications antennae attached to it. In this context, I am satisfied that the antennas are attached to an existing structure in the context of the guidelines. The other conditions and limitations relevant to Class 31 (k) of the Planning and Development Regulations are now considered.
- 8.3.7 **Condition 1. The antenna shall be attached directly to the structure (other than a structure with a flat roof) and not by way of a supporting fixture:** Having reviewed the drawings and from observations on site, I am satisfied that the antennas are attached directly to the structure and not by way of a supporting fixture. Conditions 2, 3, and 4 are not relevant.
- 8.3.8 **5. The planning authority in whose functional area the structure on which the antennae will be attached is situated shall be notified by the statutory undertaker in writing of the proposed location of any such structure at least four weeks before such attachment:** This matter is contested by the original referrer who consider that no appropriate notification to the Planning Authority occurred in relation to the structure.

- 8.3.9 In response to this matter, the developer has clarified that the telecommunications equipment was installed in support of DLR's Smart City Initiative with a memorandum of understanding being reached between Cignal Infrastructure Ltd. and the Corporate, Communication and Governance Department of DLR CO. Co. in April 2017 (copy of this memorandum is included in the file). It is stated that the Local Authority approved the design in July 2017 and the installation was approved in September that year subject to a Road Opening License. Notification was sent to both the Public Lighting Section and Roads Department within the Council. It notes that the site was developed in conjunction with the Local Authority with their full knowledge and approval.
- 8.3.10 It is evident from the documentation submitted, that the Planning Authority were fully aware of the proposed development. I note an email attached to the original referrer's submission dated the 13<sup>th</sup> of December 2017 which confirms the development is a pilot scheme done under the Smart Dublin Framework and National Broadband Plan designed to improve broadband capacity in the area. It notes that Public Lighting, Broadband Officer and Parks all gave their consent to this going ahead as did Roads Control. I am satisfied, therefore, that the Planning Authority were notified of the development and were fully aware of its nature, purpose and location.
- 8.3.11 **6. The field strength of any such antenna shall not result in the field strength of the non-ionising radiation emission from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulation:** In their response to the referral, it is stated that the field strength of the antennas does not exceed the limits specified by ComReg. The subject site was built in accordance with current Health and Safety Legislation and Emission Guidelines. The transmitted output power, antenna types and mounting configuration are consistent with modern technologies. The cumulative power output of the installation falls well below the IRPA Guidelines. It is also noted that it is ComReg's responsibility to monitor the operator's equipment to ensure compliance. Compliance with emissions limits is regulated by ComReg and this issue is outside the remit of the Board. I am satisfied from the information provided that this condition and limitation is complied with.
- 8.3.12 I note that the original referrer makes reference to a previous referral RL2708 and commentary by the reporting Inspector that a statement by a proposer that the development is designed to meet ICNIRP Guidelines would be insufficient to comply with the condition/limitations of the Regulations. The Board Direction however, in



respect of this case stated *“The Board did not agree with the Inspector that there was insufficient evidence regarding the field strength of the non-ion-ionising radiation emission from the installation.”*

## **8.4 Restrictions on exempted development**

8.4.1 Article 9 of the Regulations sets out a number of restrictions on exempted development. Having regard to these restrictions, I am satisfied that none are applicable to the subject site. I note that significant objections are raised to the development by the original referrer on the basis of its proximity to the Monkstown ACA. Reference in particular is made to a previous decision by the Board to refuse a similar development in close proximity on conservation grounds and it is contended that the development is contrary to the provisions of the Dun Laoghaire Rathdown County Development Plan.

8.4.2 Subsection (xii) poses a restriction when development consists of or comprises the carrying out of works to the exterior of a structure, where the structure concerned is located within an Architectural Conservation Area.

8.4.3 Notwithstanding the objections and previous decision of the Board which related to a similar structure within the ACA, I note that the structure is not located within the ACA and is clearly outside it. There is no restriction on exemptions for development occurring close or adjacent to an ACA boundary and in this context, I am satisfied that this restriction does not apply.

## **9.0 EIA Screening**

9.1 Having regard to nature of the development comprising telecommunications antennas on a lamppost supporting structure and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 10.0 Recommendation

10.1 I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to *“Whether the attachment of telecommunications antennae to a lamppost supporting structure and erection of ancillary equipment on Monkstown Road is or is not development and is or is not exempted development.”*

**AND WHEREAS** Dun Laoghaire Rathdown Council requested a Declaration on the said question to An Bord Pleanála on the 29<sup>th</sup> day of August 2010.

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to -

- (a) Sections 2, 3(1) and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Classes 31(f) and 31 (k) of Part 1 of Schedule 2 to the said Regulations.

**AND WHEREAS** An Bord Pleanála has concluded that -

- (a) The works are such that the fixing of antennae to a lamppost supporting structure, together with the installation of the ancillary equipment constitutes development within the meaning of the Act.
- (b) The provision of the ancillary cabinet equipment by a statutory undertaker authorised to provide a telecommunications service would come within the scope of Class 31(f) of the said Regulations,
- (c) The attachment of the antennas directly to the lamppost supporting structure by a statutory undertaker authorised to provide a telecommunications service would generally come within the scope of Class 31(k)(ii) of the said Regulations.
- (d) On the basis of the evidence submitted, the development would comply with the conditions and limitations of the said Class.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the attachment of the telecommunications antennae to a lamppost supporting structure and the provision of the ancillary equipment is development and is exempted development.

---

**Erika Casey**  
**Senior Planning Inspector**

**7th November 2018**