



An
Bord
Pleanála

Inspector's Report

ABP-308789-20

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| Development | Section 254 Licence to install over ground electronic communication infrastructure |
| Location | Powerstown Road and N24, Clonmel |
| Planning Authority | Tipperary County Council |
| Planning Authority Reg. Ref. | Signage 2020/001 |
| Applicant(s) | Signal Infrastructure Ltd. |
| Type of Application | Section 254 Licence |
| Planning Authority Decision | Refuse Licence |
| Type of Appeal | First Party v Refusal of Licence |
| Appellant(s) | Signal Infrastructure Ltd. |
| Observer(s) | None |
| Date of Site Inspection | 13.04.2021 |
| Inspector | Anthony Kelly |

1.0 Site Location and Description

- 1.1. The site is located in the north east area of Clonmel town in south Co. Tipperary.
- 1.2. The site is adjacent to the north east of the 'T' junction of the N24 and Powerstown Road. The area is grassed and there is an agricultural supplier immediately east of the site.

2.0 Proposed Development

- 2.1. The proposed development comprises a telecom streetpole and cabinet to address identified mobile and mobile broadband coverage blackspots and relates to 2G, 3G and 4G only.
- 2.2. The proposed freestanding galvanised pole is 15 metres high. All cables run internally. It has a diameter of 324mm for the lower approx. 12.3 metres which increases in width to 940mm in the upper area of the pole. The upper area will be shrouded in a sheath to match the pole. It is referred to as a lollipop streetpole and the specific model is to be confirmed. An associated 1.652 metres high cabinet is also proposed.
- 2.3. The application was accompanied by a detailed cover letter.

3.0 Planning Authority Decision

3.1. Decision

The application was refused for the following two reasons:

1. The site is located in close proximity to a number of private residences. Policy INF 11 of the Clonmel and Environs Development Plan 2013, as varied, states that the Council will facilitate proposals for telecommunications masts, antennae and ancillary equipment where it can be established that the maximum telecommunication coverage is achieved with the minimal impact on the surrounding area save in the following locations:-

- In close proximity to schools, churches, creches, community buildings, other public and amenity/conservation areas and residential areas.

The proposed development would contravene Policy INF 11 and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to:

- (a) The guidelines relating to Telecommunications and Antennae Support Structures which were issued by the Department of the Environment and Local Government to planning authorities in July, 1996;
- (b) The highly visible context of the site location and lack of screening;
- (c) The proximity to nearby industrial areas and presence of existing telecommunications installations in the vicinity that would provide a preferable location for the proposed infrastructure through co-location, site sharing or locating within industrial lands or on buildings.

It is considered that the proposed development would lead to a proliferation of telecommunications structures where an opportunity for co-location and site sharing and would seriously injure the visual amenities of the area (sic). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. The decision is based on a Planning Report which considered that having regard to the close proximity of the site to residential areas, the lack of detail and clarity in terms of site sharing, co-location and the coverage maps, and the visually prominent site location, the recommendation was not to grant a licence.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

None relevant.

5.0 **Policy Context**

5.1. **Clonmel & Environs Development Plan 2013 – 2019**

5.1.1. Section 1.6 (Relationship with Town Development Plans) of the South Tipperary County Development Plan 2009-2015 (as varied) states that Town Development Plans, including the Clonmel & Environs Development Plan 2013-2019, will remain the statutory plans for these areas until a review and preparation of Local Area Plans for these towns take place.

5.1.2. The site is in an area zoned '06 – Light Industry and Employment'. The zoning objective is 'To provide for light industry and technology, incubation units, general employment and related uses'.

5.1.3. Sections 5.8 (Infrastructure – Telecommunications) and 5.9 (Infrastructure – Access to Broadband) are relevant to the application and include Policies INF 11 (Telecommunications) and INF 12 (Broadband). Section 9.29 (Development Management Guidelines – Telecommunications) is also relevant.

5.1.4. Policy INF 11 was cited in the first reason for refusal. It states:

'The Council will facilitate proposals for telecommunications masts, antennae and ancillary equipment where it can be established that the maximum telecommunications coverage is achieved with the minimal impact on the surrounding area save in the following locations;

- (i) At locations detrimental to views, prospects or vistas,

- (ii) Within significant views of national monuments or protected structures,
- (iii) In close proximity to schools, churches, creches, community buildings, other public and amenity/conservation areas and residential areas’.

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

5.2.1. These guidelines, and the subsequent Circular Letter PL 07/12, are relevant to applications for telecommunications structures.

5.3. Natural Heritage Designations

5.3.1. The closest heritage area is the Natura 2000 site Lower River Suir SAC, approx. 800 metres to the south.

6.0 The Appeal

6.1. Grounds of Appeal

The main points made can be summarised as follows:

- The applicant’s extensive engagement with the Council, prior to submission of the application, is set out. A letter was issued by the Council on 01.09.2020 which stated that the structure requires planning permission and could not be considered which seems extraordinary given section 254(7) conveys exempt development status on any development permitted under licence. Following this notification the applicant wrote to the Director of Services and, following engagement, the decision to refuse issued on 18.09.2020.
- Visual Impact Photomontages, a ComReg map and a Site Justification Report are submitted with the grounds of appeal to supplement the information provided in the initial application.
- The first reason for refusal relates to Policy INF 11 (iii) of the Clonmel & Environs Development Plan 2013. This policy is a blunt instrument which seeks

to prevent development of key infrastructure without reasonable explanation. While no specific distance is included in the expired Plan, the Authority has failed to take into account general guidance from Circular Letter PL 07/12 though it is cited as a reference in the expired Plan. The policy not only conflicts with the intention of PL 07/12 but also the intention of the 1996 Guidelines. Section 2.3 of PL 07/12 states site distance requirements, without allowing for flexibility, can make the identification of a site for new infrastructure very difficult and planning authorities should not include separation distances. The policy actively prevents installation of telecommunications services in three categories of prohibited locations. The third category is extraordinarily restrictive and, if enforced, would seriously hinder the rollout of telecommunications services. However, it is not enforced in all cases and the decision is not consistent with previous decisions. It is noted that this third category is omitted from the telecommunications policy (Policy TI 14) of the South Tipperary County Development Plan 2009-2015 (as varied).

- It is difficult to understand the basis on which the Authority applied Policy INF 11 on land zoned for industrial/enterprise/employment use. Community facilities are open for consideration at this location, which arguably includes telecoms utility infrastructure. The applicant found no churches, creches, community buildings or public areas at the location and the nearest school is 1.7km away. It is not in 'close proximity' to residential development. The closest is c.60 metres away across the N24. Policy INF 11 does not apply and, even if it did, the development is not impactful.
- The site location is outlined. There is a run of 12 metres high lamp posts on both sides of the N24. The proposed structure does not add to a proliferation of poles and its design is consistent with the type of utility development commonly in situ in suburban areas. While maybe a curiosity initially, in time the structure will merge to become as inconsequential to the general amenity of the area as the lamp posts.
- Residential development on the opposite side of the N24 is the only ringfenced category under Policy INF 11 that has any proximity to the site though the applicant does not consider it close. The closest housing estate is c.120 metres

distant. There is a small group of residential units within a large compound screened behind mature trees on the opposite side of the N24, the closest being c.65 metres away. The applicant found no evidence of detrimental impact to these residents.

- The 'close proximity' wording of Policy INF 11 is vague and subjective. The Council has been inconsistent in its interpretation and application of the policy with telecoms development permitted within ringfenced locations e.g. at Clonmel Rugby Club, a community amenity area and within c.120 metres of residential development (P.A. Reg. Ref. 085501103) and at the fire station within 70 metres of residential development (P.A. Reg. Ref. 19600785). As the pole is not immediately situated on, or impactful on, any ringfenced category, the applicant is unsure as to the Authority's yardstick for determining close proximity or how the pole is in contravention of the policy.
- The Board has decided on cases in favour of street poles within 50 metres of residential development e.g. ABP Reg. Ref. ABP-306033-19.
- There is an Eir installation on the nearby commercial premises (ComReg Ref. TY_3532) which will be replaced by the proposed development. These antennas are within 30 metres of the residential compound and arguably of greater visual impact. This site is under functioning from a radio perspective due to its low lying position and is blocked by trees and shrubbery. This has led to the emergence of a blackspot which the proposed solution will resolve. The replacement with a discrete pole is surely more consistent with the Council's plan to allow telecommunications development 'where it can be established that the maximum telecommunications coverage is achieved with the minimal impact on the surrounding area'. However, the Authority seem to favour continuing with the current location despite evidence that it was ruled out technically. Using the Council's own definition of what is acceptable, judging by the cases cited, the pole is not located in such close proximity to ringfenced development that would contravene Policy INF 11. The first grounds for refusal are unfounded and should be set aside.
- The second reason for refusal is factually incorrect and unsupported and illustrates the failure to afford the application due process. There is no other

telecommunications structure within 1km of the site and both neighbouring rooftop sites were ruled out. Rather than choose a preferable location, the Guidelines recommend that Local Authorities should not interfere in site selection which is governed by radio engineering requirements and ultra vires to the planner's expertise to determine.

- The Authority suggests it had regard to the Guidelines in reaching its decision, however it is direct conflict with the Guidelines. Section 4.1 states the design of the antennae and support structure will be dictated by radio and engineering parameters and location will be substantially influenced by radio engineering factors. It ignores Section 4.3 which clearly states a preference for industrially zoned land and suggests that on major roads, views of the structure may be acceptable if they are intermittent and incidental. The Guidelines encourage site sharing. Surveys and assessments were carried out. There is a lack of existing infrastructure within 1km. The installations shown are rooftop sites and are incapable of expansion to provide for Eir's network requirements. The shared Vodafone/Three site (TY097) is on commercial premises outside the 500 metres search ring centred on the blackspot. The site favoured by the planner for co-location has been referenced and a pole at this location would be more visually obtrusive on the neighbourhood. Exempted rooftops have been favoured in the area which provides a solution for a limited distance. The existing building prevents the existing low level antennae from being enhanced and it is persistently blocked by vegetation. A pole at that location would be more visually obtrusive on the adjacent residential development and trees surrounding the site would block coverage along the road. The proposed replacement pole is state of the art, more functional and will deliver enhanced services. The bowling alley site is closer to residential development and would conflict with Policy INF 11, which calls into question the first reason for refusal given the planner's stated preference.
- The second reason for refusal states it would seriously injure the visual amenities of the area. The pole is in keeping with design standards in a mixed-use area, is a low profile pole solution and replaces an under functioning rooftop site. The pole has fully screened antennae and the dish will not be required. There are no direct views from the nearby bungalows.

- A more thorough visual assessment has been submitted with the grounds of appeal from 11 no. vantage points within a 300 metres radius. The pole is either not visible at all or only partially visible in nine of the eleven vantage points examined. When in direct proximity to the pole the views are considered to be overtly impactful, such that could be described as seriously injurious to the area's amenity. The width is consistent with the street lamps, though a few metres taller. Even when fully visible the structure could not be described as being overtly prejudicial to amenity, given that visibility of utility development is to be expected alongside a major road in a suburban environment. When judged against Environmental Protection Agency (EPA) Guidelines, the anticipated impact of the pole should be considered slight to moderate and neutral in terms of its effect on the receiving environment.
- The decision stated the location provided an opportunity for co-location and site sharing and granting permission would lead to a proliferation of telecommunications structures. There are no structures within 1km. The application describes how the area was surveyed and locations assessed and ruled out. The Broadband Officer and Roads Authority approved the location in advance. It has to be acknowledged that the operator has superior knowledge of both its network requirements and current coverage. There is no discernible reason for the operator to make false statements in this regard. Confusingly, it is a stated preference for a location on industrially zoned land despite the proposed development being within an industrial zone. There are no existing telecoms structures or suitable buildings or alternative locations to meet Eir's network requirements.
- It is commonly understood that the most acceptable physical infrastructure along roadways are slimline street solutions as defined in the National Broadband Taskforce reports and Green Book (Guidance on the Potential Location of Overground Telecommunications Infrastructure on Public Roads) which also confirms a 15 metres height is acceptable.
- There is nothing in the proposed development that runs contrary to the objectives of the Clonmel & Environs Development Plan, it is in line with the 1996 Guidelines and has slight impact when measured against EPA

Guidelines. The nature and height of the proposal is in line with the proper planning and sustainable development of the area and the second reason for refusal should be set aside.

- Working from home has amplified the need for seamless indoor coverage for homeworkers and small businesses. Rather than being viewed as detrimental, the availability of high speed mobile and data services is now considered beneficial to the amenity of an area. The infrastructure required cannot be made entirely invisible, but its impact can be lessened by design and siting.
- A 'Site Justification Report' has also been submitted with the grounds of appeal as an appendix.

6.2. **Planning Authority Response**

- 6.2.1. The Council considers the decision to refuse the granting of the licence is reasonable having regard to the Clonmel & Environs Development Plan 2013, as varied and requests the Board to uphold the decision.

6.3. **Observations**

None.

6.4. **Further Responses**

None sought.

7.0 **Assessment**

The review of the application for the licence and the grounds of appeal can be considered under the following headings:

- Background to the Application
- Legislative Context / Section 254
- First Reason for Refusal – Policy INF 11 of the Clonmel & Environs Development Plan 2013 – 2019

- Second Reason for Refusal – Proliferation of Structures and Visual Amenity
- Appropriate Assessment

7.1. Background to the Application

7.1.1. The applicant is an infrastructure provider for the communications industry with sites around the country supporting mobile and broadband communications, including tower, mast, roof top and streetwork solutions. The area is a known blackspot for mobile and wireless broadband. A solution has been identified by Eir.

7.2. Legislative Context / Section 254

7.2.1. Section 254(1)(ee) of the Planning & Development Act, 2000 (as amended), states that a person shall not erect, construct, place or maintain overground electronic communications infrastructure and any associated physical infrastructure on, under, over or along a public road save in accordance with a licence. Section 254(6)(a) states that any person may appeal to the Board in relation to the refusal of a licence. Section 254(5) states that, in considering an application for a licence, the planning authority, or the Board on appeal, shall have regard to:

- (a) The proper planning and sustainable development of the area,
- (b) Any relevant provisions of the development plan, or a local area plan,
- (c) The number and location of existing appliances, apparatuses or structures on, under, over or along the public road, and
- (d) The convenience and safety of road users including pedestrians.

7.2.2. I consider the site is along the public road, as defined in the Roads Act, 1993 (as amended). It comprises a grass margin which contains road signs and public lighting and is on the roadway side of the adjoining commercial compound boundary fencing. Therefore, I consider section 254 is the appropriate mechanism for the proposed development.

7.3. First Reason for Refusal – Policy INF 11 of the Clonmel & Environs Development Plan 2013 – 2019

- 7.3.1. The first reason for not granting the licence is set out in full under Section 3.1. The reason effectively states that the proposed structure would be too close to residences and would therefore be contrary to Policy INF 11, which is set out in full in Section 5.1.4.
- 7.3.2. Policy INF 11 is contained within Section 5.8 (Telecommunications) of the Plan. Section 5.8 states that ‘The Council recognises the importance of a high quality telecommunications service for the economic and social development of Clonmel and the Council will seek to achieve a balance between facilitating the provision of mobile telecommunications services in the interests of social and economic progress and sustaining residential amenities and environmental quality’. Policy INF 12 (Broadband) states ‘The Council will proactively work with key stakeholders to enhance broadband coverage and will facilitate the continued development of broadband infrastructure in the town in line with national and regional policies’. Therefore, in general, the Plan is supportive of telecommunications infrastructure.
- 7.3.3. Policy INF 11 does not contain any specific distance requirements from residential areas, in line with Section 2.3 of Circular Letter PL 07/12. Therefore, these applications must be considered on a case by case basis. Having regard to the site location, I consider that the Council has taken an unduly restrictive approach to the interpretation of Policy INF 11 in this instance.
- 7.3.4. The site is in an area zoned ‘06 – Light Industry and Employment’, albeit at the very edge of this zoning, and at the junction of a local road and the N24 ring road. Though there is no relevant land use set out in the Plan’s Land Use Zoning Matrix e.g. telecommunications or utilities, Section 4.3 (Visual Impact) of the Telecommunications Antennae and Support Structure Guidelines for Planning Authorities (1996) states, inter alia, that in the vicinity of larger towns, ‘operators should endeavour to locate in industrial estates or in industrially zoned land’. This section also states that only as a last resort should free-standing masts be located in a residential area. I do not consider, given the land uses in immediate proximity of the site and in the wider general area, that the site location could be considered ‘residential’. The closest development is a fuel and farm supplies compound adjacent to the east with other

industrial land adjacent to that. The area to the north is largely open space/amenity and includes Clonmel Racecourse. There are also a couple of areas further to the south west on the opposite side of the N24 which are also zoned 'Light Industry and Employment', including the bowling alley structure where the current low-level mast is located, and which is to be replaced by the proposed development. Residential zoned land is located south of the N24.

7.3.5. The closest residential area is Railway Cottages on the opposite side of the N24 to the south west, approx. 40 metres away at the closest point. Powerstown Way housing development is approx. 80 metres to the south on the opposite side of the railway line. There may be a private house approx. 100 metres away on the opposite side of Powerstown Road. Therefore, while there may be residential development in the wider vicinity, I do not consider this can be considered to be a residential area.

7.3.6. Therefore, having regard to the location of the proposed telecommunications structure adjacent to a roads junction, the light industry and employment zoning of the site, the nature of the adjacent land use and the general separation distances to residential development, I do not consider that the proposed development would contravene Policy INF 11 of the Clonmel & Environs Development Plan 2013-2019. I consider the site location to be acceptable and consistent with the relevant provisions of the Development Plan and 1996 Guidelines.

7.4. Second Reason for Refusal – Proliferation of Structures and Visual Amenity

7.4.1. The second reason for not granting the licence is also set out in full under Section 3.1. The reason considers that the development would lead to a proliferation of telecommunications structures and would seriously injure the visual amenity of the area. The reason refers to the 1996 Guidelines, the highly visible site location, the existing installations where co-location or site sharing could occur and the nearby industrial areas where the proposed structure could be located. The wording of the concluding paragraph in the reason for refusal is confusing. However, it appears to consider that the proposed development would add to the number of different telecommunications locations in the wider area.

7.4.2. The reason for refusal includes three subsections: the 1996 Guidelines, the visibility of the site, and the proximity to nearby industrial areas and existing installations.

- (a) The 1996 Guidelines – As noted in Section 7.3, the Guidelines state that in the vicinity of larger towns, ‘operators should endeavour to locate in industrial estates or in industrially zoned land’. That is the case with this application, and I consider the site location to be generally consistent with the Guidelines.
- (b) The site location is primarily visible to occupants of vehicles travelling along the N24 or close to the junction of Powerstown Road with the N24 or people in the adjacent commercial property. Due to existing tree coverage and the backdrop of the commercial premises, there would be no direct view of the proposed structure which I consider would unduly affect the amenity of the occupants of Railway Cottages. There is substantial mature tree coverage along the roadsides and the railway bridge above the N24 is approx. 70 metres south east of the site. There are also streetlights and traffic signage in the immediate area. While the site may be ‘highly visible’ from certain vantage points, I do not consider that the area is of any particular amenity value and I do not consider that the provision of a 15 metres high telecommunications pole would have any undue adverse impact. I also note the additional photomontages submitted with the grounds of appeal.
- (c) The reason for refusal notes the proximity of industrial areas (notwithstanding that the site is just within the boundary of an area so zoned) and considers that there are existing telecommunications installations in the vicinity that would provide a preferable location through co-location or site sharing. There is an existing Eir installation on the side of the bowling alley building approx. 130 metres to the south west that the proposed structure is to replace. (On inspection there were three separate installations on three different elevations, all similar in terms of their design. They are on the sides of the building, rather than on the roof). This location was discounted because it would be closer to residential areas, would be more visually obtrusive on the neighbourhood and the proposed location would provide enhanced services at further distance from any residents. The cover letter submitted with the application set out the reasons why the proposed site was chosen i.e. within the search ring, connectivity is in close proximity, an absence of overhead cables, no existing utility services, an industrial/commercial activity area and existing trees will help blend the structure into the environment. Other locations were also reviewed,

as set out in the cover letter, but were discounted for reasons including being not sufficiently within the search ring, a large number of high trees preventing the required radio coverage, commercial premises adjacent to the N24 were too low and the current location would have less visible impact than other green areas considered. From the ComReg website I note two other existing telecommunications sites within the general radius: 3_TP0128 approx. 1.1km west at Carraigeen Business Park and 3_TP0012/TY097 approx. 600 metres to the south east which appears to be on the roof of the FBD Building in Gortnafleur Business Park. The cover letter appears to specifically reference the existing structure at Carraigeen. A new structure at this location was discounted by the applicant because it was too far west of the search ring. Page 8 of the grounds of appeal notes the presence of TY097, and includes a photograph of it. It was discounted because it was outside the search ring. I consider that the applicant has reasonably demonstrated the absence of suitable existing opportunities for site sharing or co-location.

- 7.4.3. The receiving environment is a mixed-use area with an agricultural fuel and farm supplies compound the closest land use. The site is at the junction of two roads with a number of mature trees in the area. It is not an area of any notable scenic value and it is appropriately zoned. Section 5.9 (Access to Broadband) of the Clonmel & Environs Development Plan 2013 states, 'The Council recognises the importance of advanced communications as a key component for the economic development of Clonmel ... the development and provision of Broadband services benefitting Clonmel and its hinterland will be encouraged ...' I consider, having regard to the foregoing, that the second reason for refusing the licence is not reasonable.

7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban location remote from and with no pathways to any European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that a licence be granted subject to conditions, for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of section 254 of the Planning & Development Act, 2000 (as amended), national and local policy objectives as set out in the Clonmel & Environs Development Plan 2013-2019, and the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (1996) as updated by Circular Letter PL 07/12, it is considered that, subject to compliance with the conditions set out below, the proposed development would be consistent with the relevant provisions of the Clonmel & Environs Development Plan 2013-2019, would not be seriously injurious to the amenities of the area or residential amenity in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The licence shall be valid for a period of 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. The antenna type and mounting configuration shall be in accordance with the details submitted with this application for a licence, and notwithstanding the

provisions of the Planning and Development Regulations 2001, and any statutory provision amending or replacing them, shall not be altered without a prior grant of planning permission.

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.

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

Reason: In the interest of public health.

4. 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.

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

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

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

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

7. 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.

Anthony Kelly

Planning Inspector

16.04.2021