



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308857-20

<b>Development</b>	Section 254 Licence for Telecommunications Streetworks Solution
<b>Location</b>	Sylvan Drive, Kingswood, Co. Dublin.
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	S23119/06
<b>Applicant(s)</b>	Signal Infrastructure Ltd.
<b>Type of Application</b>	Section 254 Licence
<b>Planning Authority Decision</b>	Grant Licence
<b>Type of Appeal</b>	Third Party v Grant
<b>Appellant(s)</b>	Kingswood Heights Mast Opposition Committee
<b>Observe (s)</b>	John Lahart TD
<b>Date of Site Inspection</b>	24.03.2021
<b>Inspector</b>	Anthony Kelly

## 1.0 Site Location and Description

- 1.1. The site is located approx. 250 metres north of the Kingswood Luas Stop. It is a grassed area adjacent to fenced tennis courts and close to the main internal vehicular access road (Sylvan Drive) serving the residential area. There are also educational and commercial facilities in the vicinity. On inspection, the telecommunications pole and cabinet were in place.

## 2.0 Proposed Development

- 2.1. The development comprises a freestanding 15 metres high galvanneal pole structure with internal cables and a diameter of 324mm-406mm. Above 11.5 metres the 2G, 3G and 4G antennae are shrouded in a sheath to match the pole. The development includes an associated 1.652 metres high cabinet.
- 2.2. Further information was submitted in relation to separation distances from underground services, a map showing all telecommunications structures within 2km and a rationale as to why sharing existing facilities is not feasible.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Council decided to grant the licence subject to 18 no. conditions including a three year licence duration, the right to withdraw the licence, reinstatement of the site, restriction on additional equipment, external finish, surface water and construction practices.

### 3.2. Planning Authority Reports

- 3.2.1. Two Planning Reports form the basis of the planning authority's decision. The second report concludes that, having regard to the additional information submitted and the provisions of the County Development Plan 2016-2022, subject to conditions, the

proposed development would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

### 3.2.2. Other Technical Reports

**Environmental Services** – The Planning Report states no objection, subject to conditions.

**Roads** – The Planning Report states no objection, subject to conditions.

**Broadband Officer** – The Planning Report states the Officer, verbally, had no objection.

**Asset Management** – The Planning Report states Asset Management, verbally, had no objection.

### 3.3. Prescribed Bodies

**Irish Water** – Irish Water is satisfied that separation distances can be achieved and requests a condition to be attached to any grant of permission.

### 4.0 Planning History

None.

### 5.0 Policy Context

#### 5.1. South Dublin County Council Development Plan 2016-2022

- 5.1.1. The site is in an area zoned 'Objective OS; To preserve and provide for open space and recreational amenities'. 'Public services' is cited as open for consideration in Table 11.5 (Zoning Objective 'OS'). 'Public services' is defined in Schedule 5 (Definition of Use Classes & Zoning Matrix Table) as including 'all service installations necessarily required by electricity, gas, telephone, radio, telecommunications, television, drainage ...'

5.1.2. Section 7.4.0 (Infrastructure & Environmental Quality (IE) Policy 4 Information and Communications Technology (ICT)) states 'It is the policy of the Council to promote and facilitate the sustainable development of a high quality ICT network throughout the County in order to achieve balanced social and economic development, whilst protecting the amenities of urban and rural areas'. Objectives are:

IE4 Objective 1 – To promote and facilitate the provision of appropriate telecommunications infrastructure, including broadband connectivity and other innovative and advancing technologies within the County.

IE 4 Objective 2 – To co-operate with the relevant agencies to facilitate the undergrounding of all electricity, telephone and television cables in urban areas wherever possible, in the interests of visual amenity and public health.

IE4 Objective 3 – To permit telecommunications antennae and support infrastructure throughout the County, subject to high quality design, the protection of sensitive landscapes and visual amenity.

IE4 Objective 4 – To discourage a proliferation of telecommunications masts in the County and promote and facilitate the sharing of facilities.

IE4 Objective 5 – To actively discourage the proliferation of above ground utility boxes throughout the County and to promote soft planting around existing ones and any new ones that cannot be installed below the surface to mitigate the impact on the area.

IE4 Objective 6 – To require the identification of adjacent Public Rights of Way and established walking routes by applicants prior to any new telecommunications developments (including associated processes) and to prohibit telecommunications developments that impinge thereon or on recreational amenities, public access to the countryside or the natural environment.

5.1.3. Section 11.6.2 (Implementation – Infrastructure & Environmental Quality – Information and Communications Technology) states 'In the consideration of proposals for telecommunications antennae and support structures, applicants will be required to demonstrate:

> Compliance with the Planning Guidelines for Telecommunications Antennae and Support Structures (1996) and Circular Letter PL 07/12 issued by the DECLG (as may

be amended), and to other publications and material as may be relevant in the circumstances,

- On a map, the location of all existing telecommunications structures within a 2km radius of the proposed site, stating reasons why (if not proposed) it is not feasible to share existing facilities having regard to the Code of Practice on Sharing of Radio Sites issued by the Commission for Communications Regulation (2003),
- Degree to which the proposal will impact on the amenities of occupiers of nearby properties, or the amenities of the area (e.g. visual impacts of masts and associated equipment cabinets, security fencing treatment etc) and the potential for mitigating visual impacts including low and mid level landscape screening, tree type masts being provided where appropriate, colouring or painting of masts and antennae, and considered access arrangements, and
- The significance of the proposed development as part of the telecommunications network.'

## 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 Natura 2000 site is Glenasmole Valley SAC approx. 5.2km to the south. The closest heritage area is Grand Canal pNHA approx. 2.6km to the north.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal is submitted by Joe Edgeworth, Chairperson of the Kingswood Heights Mast Opposition Committee. The main points made can be summarised as follows:

- The site of the installed telecommunications infrastructure is mature open space beside tennis courts and is an area used by local children, sports clubs and schools. It is bounded by houses. There is a community centre, two schools, two creches and a playground in the area. The incorrect address has been used.
- A 15 metres high 'Smart Streetpole Solution' and operator cabinet have been installed.
- The grounds of appeal set out sections of the South Dublin County Council Development Plan 2016-2022 relating to open space, masterplans, communications infrastructure in sensitive landscapes and Sections 7.4 and 11.6.2 of the Plan.
- It is not possible to apply for a section 254 licence because the site is zoned for open space. ABP Reg. Ref. ABP-306474-20 applies. The Council have exceeded their statutory powers and the decision is null and void. In the same applicant's appeal under ABP Reg. Ref. ABP-307196-20 they drew attention to the legal definition of 'public road' and 'margin'. The mast site does not fall under the definition of a 'road' or 'margin' as it is zoned open space and the option to apply for a section 254 licence does not apply.
- The application is missing a significant amount of information e.g. no specific list of other sites with reasons for their non-selection and no coverage maps submitted. A proper assessment could not have been carried out.
- A telecommunications structure is not permitted or open for consideration in an open space zoning.
- The applicant has not complied with the provisions of Section 11.6.2 of the County Development Plan. No residential properties are shown so the visual impact on adjoining properties has not been set out. The Guidelines state that ICT should be located away from open space areas used for training facilities and by schools. The Guidelines recommend ICT should be in industrial areas and expressly seek to avoid residential areas in suburban locations. There are high demand and industrial areas within 2km of the site and if there is a requirement to fill demand in these areas the mast should be as close as

possible to these areas. If ICT can reach these areas from Kingswood, then the inverse also stands to reason. Failure to identify a single area in the high demand commercial, industrial and social development areas, and for the applicant to state this site is a 'last resort', is a fatal flaw.

- Kingswood is not 'densely populated' as described and the search area for the 'replacement' ICT should be up to 2km. The search ring shown is no more than 200 metres. The applicant has failed to identify any coverage issues in the area. Eir's own website shows no major blackspots in the area. From previous applications the applicant says and submits anything to justify the individual planning application. It is stated the signal from the existing ICT is blocked by elevated structures and topography but then explain the reason for the site is due to very few elevated structures in the area. Kingswood Lodge have stated that no approach was made to them contrary to the applicant's claim.
- The application fails to address the visual impact on adjoining properties or on the amenities of the open space. The ICT is significantly higher and larger than the floodlights around the tennis courts. The cabinet is poorly installed. The site constitutes a prominent negative feature.
- Precedent has been set in APP Reg. Refs. ABP-306474-20 (section 254 does not apply), ABP-306616-20 (impact on amenity), PL07.236377 (impact on amenity) and ABP-307196-20 (the applicant stated certain sites were not suitable for consideration due to proximity of schools, creches and housing).
- Additional documentation has been submitted with the grounds of appeal including letters of support from St. Killian's Junior and Senior National Schools, Kingswood Lodge stating no approach was made to them by the applicant, a map showing the proximity to local amenities, site photographs, search rings, zoning maps, coverage maps and the Inspector's Report for ABP-306474-20.

## 6.2. Applicant's Response

The main points made can be summarised as follows:

- The operator (Eir) has one under functioning rooftop site in Kingswood (DN1486). There is no capacity to expand or otherwise improve this 3G site.

The subject three sector site is designed to host a variety of 4G technologies. It extends the coverage provided by the existing rooftop site which will be decommissioned and removed. The visual impact is moderate and contextualised by the public service lighting. While rooftop sites are still deployed, they are considered to be a suboptimal choice for technical reasons.

- The membership of the Kingswood Heights Mast Opposition Committee is unknown. Considerable local support exists for the development as shown in Appendix A. Use of mobile data has increased exponentially since Covid commenced with three out of five people working doing so from home. There is also second and third level students, small businesses and all aspects of 21<sup>st</sup> Century life.
- It is not a 'mast' as described. It is a 15 metres high pole, 0.324 metres in diameter. The dish shown on the drawings is not required. The site location is consistent with s254 requirements and the zoning objective. The application received full consideration, including a further information request. Once alerted to public concerns the applicant engaged with the group and continues to offer this engagement. Construction was halted to ensure the safety of workers and works to reinstate the ground required An Garda Síochána. The pole is in situ waiting completion.
- Section 2 of the Public Roads Act 1993 which legally defines a public road includes (b) pavement or footway. The area in question, between the fencing and the pathway, meets the dictionary definition of a footway in that it is a 'path or track for pedestrians' to the entrance of the tennis court, built into the fence, and to the spectator vantage points alongside. The strip of land is annexed from the main body of Tynan Hall Park and serves no function as open space amenity. As the site is on land that is an established footway to the entrance of the tennis court it qualifies for consideration under s254.
- The broader location's zoning as Open Space does not prevent public service development which is open for consideration at the location.
- The circumstances of ABP-306474-20 are not comparable to this case. That site was considered to be too far from the nearby footpath (road) on the open space land and so could not be described as compliant with s254. In this case



the pole is on land better described as a footway (road) over a marginal strip of land annexed from the surrounding Open Space amenity. A closer and more relevant precedent is ABP Reg. Ref. ABP-306033-19 which describes a pole ostensibly zoned open space, but which has no amenity function as it is separated from the main area. The Board decided that an open space zoning does not prevent marginal spaces such as a footway (road) from qualification under the Roads Act definition in circumstances where the land's amenity use is no longer functional.

- Access to state of the art digital services is desirable. Comments that the pole is impactful on the amenity of the area are disingenuous, misrepresent the impact and the site selection process and are arguably not representative of the wider community. On balance, benefits outweigh any perceived impact.
- A Signal Site Justification Document and Eir Mobile coverage plots are attached. These substantiate the benefit to the wider neighbourhood of replacing the existing site and the last resort nature of the proposal. There are other blackspots in the wider area. A solution 1 or 2kms away will not bring Next Generation services to these areas. They can only be serviced by localised infrastructure with a narrow 300 metres search ring. Finding a low impact location in a suburban area is difficult. The location chosen was considered least impactful. The closest houses are 40-60 metres, not 20-30 metres as stated by the appellant. Setting the pole along existing lighting structures lessens impact. The Board has decided on cases in favour of street poles within 50 metres of residential development e.g. ABP-306033-19 and ABP-307354-20. The appellant and schools do not expand on their reasons for objecting on the basis of proximity. There is no scientific or other valid basis on which to prevent telecoms development in proximity to these types of locations provided it is suitably sited. The existing rooftop site is 120 metres from the school, this site is 200 metres away. Telecommunications was designated an essential service by the government in March 2020. This low impact solution delivers next generation services in an area with limited coverage currently.
- The 1996 Guidelines do not prohibit use of a certain type of infrastructure or prevent siting in a certain type of location. As a last resort, the siting of suitably

adapted pole infrastructure is clearly acceptable in residential areas or beside schools. The use of street solutions is upheld in the National Broadband Plan and The Green Book. The height of the pole was kept to the minimum necessary for operation in compliance with the Guidelines and detailed consideration was given to both the siting and external appearance. The cabinet is also kept to minimum size. It is considered the general impact of the pole is equivalent to the existing floodlights and surrounding street lighting. Oblique views of it may be possible from nearby houses, however the structure could not be described as being overtly prejudicial to amenity given that visibility of utility development is to be expected in a suburban environment. The pole is within acceptable impact parameters. Though higher than the floodlights, its width is consistent with the in situ utilities and the cabinet is size is consistent with the telecoms cabinet on the other side of the fence. In time the pole will merge to become inconsequential to the general amenity of the area. Judged against the Environmental Impact Agency's impact criteria the impact of the pole is slight to moderate, and neutral or positive in terms of its effect on the receiving environment.

- There are considerable costs involved in infrastructural rollout and provision of services. Eir does not want to install poorly located infrastructure so due care and attention is given to ensure each application meets radio requirements.
- Extracts from social media relating to the development is attached as Appendix 1. An (undated) 'Street Works Site Justification Form', a 'Study on the Impact of Covid-19 on Home Broadband and Mobile Service Usage (September 2020)', an (undated) 'Coverage Plots – WD\_2819 St. John's Hill' document and a letter of support from Eir dated 12.01.2021 have also been submitted with the applicant's response.

### 6.3. Planning Authority Response

None.

## 6.4. Observations

- 6.4.1. An observation was received from John Lahart TD supporting the appeal by Kingswood Mast Committee.

## 6.5. Further Responses

None sought.

## 7.0 Assessment

The review of the application for the licence, the grounds of appeal and the applicant's response can be considered under the following headings:

- Background to the Application
- Infrastructure & Environmental Quality (IE) Policy 4 Information and Communications Technology (ICT) of the South Dublin County Council Development Plan 2016-2022
- Section 11.6.2 (Information and Communications Technology) of the South Dublin County Council Development Plan 2016-2022
- Legislative Context / Section 254
- 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 the mobile network licenced operator and a letter of support has been submitted from Eir.

## 7.2. Infrastructure & Environmental Quality (IE) Policy 4 Information and Communications Technology (ICT) of the South Dublin County Council Development Plan 2016-2022

- 7.2.1. IE Policy 4 contains six separate objectives which are set out in full under Section 5.1.2 of this assessment. The appeal is considered in the context of this policy.
- 7.2.2. The proposed development is consistent with Objective 1 which promotes and facilitates appropriate telecommunications infrastructure. I note from the Planning Report that the planning authority's Broadband Officer verbally indicated no objection to the licence.
- 7.2.3. I do not consider Objective 2 to be relevant to this licence application.
- 7.2.4. Objective 3 states antennae and support infrastructure will be permitted subject to high quality design and protection of sensitive landscapes and visual amenity. The antennae are contained within a slimline pole and shrouded at the top. They are adjacent to floodlights. The pole is already in situ in an area that cannot be considered a sensitive landscape. I consider the structure to be typical of the emerging type of telecommunications infrastructure and do not consider that it unduly affects the visual amenity of this suburban area.
- 7.2.5. In relation to Objective 4, the ComReg Site Viewer map shows that the original mast (Site 1486, approx. 220 metres north west of the current site location) is the only mast within the area enclosed by the M50 to the north east, the M7 to the north west, Belgard Road (R113) to the west/south west and the R838 to the south. This is an area of approx. 2.2km<sup>2</sup>. The original mast is to be replaced by the slim line pole which would remain the only telecommunications structure in the vicinity. Therefore, the development does not result in a proliferation of masts. Sharing of facilities is addressed in Section 7.3.3.
- 7.2.6. In relation to Objective 5, I consider a soft planting scheme around the proposed cabinet would be appropriate. There are two separate existing utility cabinets in close proximity, along the footpath and near to the entrance to the tennis courts. The cabinet associated with this application is not a significant concern from a visual perspective. The applicant's response indicates that work at the site remains incomplete.

- 7.2.7. There does not appear to be any Public Rights of Way or established walking routes affected by the development. The location is immediately adjacent to the corner of the tennis courts, in an open space zoned area and it has negligible impact on recreational amenities. Objective 6 is not adversely affected.
- 7.2.8. Section 7.4.0 states that the widespread availability of a high quality ICT network will be critical to the development of the County's economy and will support the social development of the County. I consider that the development would be consistent with the objectives of IE Policy 4 and the proper planning and sustainable development of the area.
- 7.3. **Section 11.6.2 (Information and Communications Technology) of the South Dublin County Council Development Plan 2016-2022**
- 7.3.1. Section 11.6.2 contains four separate elements which are set out in full under Section 5.1.3 of this assessment. The appeal is also considered in the context of this section.
- 7.3.2. The first element requires demonstration of compliance with the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (1996) and Circular Letter PL 07/12. I accept that co-location or sharing an existing site is not feasible at this location given the absence of existing sites and the relevant search ring. The guidelines note that in most cases there will only be limited flexibility as regards location given the constraints arising from radio planning parameters. In city suburbs operators should endeavour to locate in industrial areas. The applicant has addressed this, and it is noted that the existing location, on commercial premises, is under performing. The guidelines state that only as a last resort should masts be located in a residential area or beside schools. In this application the replacement slimline pole is further away from schools than the existing mast. The applicant states this location was a 'last resort' and I accept that. I note the Board has permitted similar applications closer to houses than exists in this application e.g. ABP-307196-20. The applicant states the height is the minimum necessary for operation. I consider the development is generally consistent with the Guidelines.
- 7.3.3. In relation to the second element, a map showing all telecommunications structures within a 2km radius was submitted as part of the further information response. The applicant has set out that it is not feasible to share existing facilities because no

suitable alternative structures were found that could provide the necessary coverage. There are 39 no. sites within the 2km radius and Eir already occupy a majority of these. Cell radii drop below 1km in suburban areas and 500 metres in densely populated urban areas and this is an area of high usage customers given, for example, industrial estates and the hospital, within 2km. The only site within 500 metres is the existing rooftop site due for replacement by this development. I consider the applicant has adequately set out why it is not feasible to share existing facilities.

- 7.3.4. The slimline pole structure is in situ and therefore its impact is already clear. While it is visible from a relatively large area, in particular from the open space area and the road where existing built fabric does not disrupt the view, I consider that its proximity to the tennis court floodlights reduces its impact and it is not a stand-alone structure which affects any sensitive views. Development of these types of services will affect the receiving environment. However, in this case I do not consider that it has an unduly adverse impact on the amenities of occupiers of nearby properties or the amenities of the area. I consider the third element of Section 11.6.2 to be addressed.
- 7.3.5. In relation to the fourth element, the development would address a localised coverage blackspot and replace an under functioning site with a modern structure which the applicant refers to as state of the art. The planning authority's Broadband Officer indicated no objection to the development. As set out previously, Section 7.4.0 of the County Development Plan states that the widespread availability of a high quality ICT network will be critical to the development of the County's economy and will support the social development of the county. I consider the proposed development would help to achieve this aim.
- 7.3.6. Having regard to the foregoing I consider the development would be consistent with the content of Section 11.6.2 of the County Development Plan 2016-2022 and would be in accordance with the proper planning and sustainable development of the area.

#### **7.4. Legislative Context / Section 254**

- 7.4.1. Concern about the mechanism by which permission for the development was sought i.e. by way of a section 254 application, forms a significant aspect of the third party appeal and I consider it to be a core consideration in this assessment.

7.4.2. 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 under this section. Section 254(6)(a) states that any person may appeal to the Board in relation to the granting or refusal of a licence. Section 254(5) states that, in considering an application for a licence under this section, 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.

7.4.3. The definition of 'public road' is critical in considering whether a section 254 licence is the appropriate mechanism for facilitating the development. Section 2 of the Planning & Development Act, 2000 (as amended) states that "public road" has the same meaning as in the Roads Act, 1993. Section 2 of the Roads Act, 1993 (as amended) defines a public road as meaning 'a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority'. Section 2 also states;

"road" includes—

- (a) any street, lane, footpath, square, court, alley or passage,
- (b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,
- (c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and
- (d) any other structure or thing forming part of the road and—

(i) necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment, or

(ii) prescribed by the Minister;'

7.4.4. The appellant considers that section 254 is not applicable to this site and refers, in particular, to ABP-306474-20. The applicant considers the section 254 process is the appropriate mechanism and refers, in particular, to ABP-306033-19.

7.4.5. ABP-306474-20 relates to a section 254 application for a 15 metres high telecommunications monopole and cabinet in Cork City Council's jurisdiction. The proposed site was a green area zoned public open space. The Inspector's Report noted the siting of the pole and cabinet on public open space 'abutting a footpath which forms part of the Ringmahon Road' and considered that, while the location is a peripheral part of the public open space, 'it does not form part of the footpath, pavement, footway, kerb or any other feature of the road...'. The Inspector considered that the siting of the infrastructure did not meet with the provisions of section 254 and the Board's decision was consistent with the Inspector's recommendation in this regard.

7.4.6. ABP-306033-19 relates to a section 254 application for a similar development in Letterkenny, Co. Donegal. The site comprised a grass verge, a peripheral part of a larger public open space area and partially screened from this space by shrubs and planting. The site was zoned as 'Open Space' and was described in the Inspector's Report as 'a narrow grass verge which is functionally separated from the adjoining public open space ... the subject site has limited value as an amenity space'. The licence was granted by the Board following a recommendation for a grant.

7.4.7. The site subject of the application is zoned for open space, is immediately adjacent to tennis courts and is approx. 3 metres from the footpath which runs alongside Sylvan Drive. The site forms part of the overall Tynan Hall Park and part of a grassed area completely encircling the tennis courts, though relatively narrow in width along the north east side of the courts. Section 254 relates specifically to development along a public road. The applicant refers to the land on which the pole is located as a 'footway (road) over a marginal strip of land annexed from the surrounding Open Space amenity'. This land, while it may be marginal, is still clearly part of the overall collective



public open space area and is zoned as such on Map 5 of the County Development Plan 2016-2022. A 'footway' is included in the definition of a road and is itself defined in section 2 of the Roads Act, 1993 (as amended) as meaning 'that portion of any road associated with a roadway which is provided primarily for use by pedestrians'. A 'roadway' is defined as 'that portion of a road which is provided primarily for the use of vehicles'. Therefore, I do not consider the site area can be considered as a footway.

7.4.8. Having regard to the relevant legislation and the precedents set out in both the grounds of appeal and the applicant's response, I consider that a section 254 application is not the correct mechanism by which to carry out the development. The site is part of a large, zoned area of open space and is clearly separate from, and forms no part of, the adjacent roadway, footpath and the grass margin between them which, in my opinion, comprises the 'road' in this area. While I have no objection, in principle, to the subject development at this location, subject to standard conditions, I consider the development does not meet with the provisions of section 254 of the Planning & Development Act, 2000 (as amended) because it would not be located on, under, over or along a public road.

#### 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 a suburban location remote from and with no hydrological pathway to any 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.

#### 8.0 **Recommendation**

8.1. I recommend that a licence not be granted for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

1. The Board is not satisfied that the siting of the telecommunications infrastructure is on or along a public road in accordance with the requirements of section 254 of the Planning & Development Act, 2000 (as amended), but is on public open space, and it is considered that the Board cannot grant a licence for the development in such circumstances.

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Anthony Kelly  
Planning Inspector  
21.04.2021

**DECISION QUASHED**