



An
Bord
Pleanála

Inspector's Report

ABP-309598-21

Development	Section 254 for streetpole solution to address identified mobile and mobile broadband coverage blackspots
Location	Junction of St. John's Hill and The Folly, Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	19/523
Applicant(s)	Cignal Infrastructure Ltd.
Type of Application	Section 254 Licence
Planning Authority Decision	Refuse Licence
Type of Appeal	First Party v Refusal of Licence
Appellant(s)	Cignal Infrastructure Ltd.
Observer(s)	None
Date of Site Inspection	08.06.2021
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located on the footpath at the north west side of the signalised junction of John's Hill and The Folly (R709) in Waterford City.
- 1.2. The footpath is relatively wide at this location, approx. 8 metres at the widest point. It is proposed to locate the streetpole and cabinet adjacent to a wall which has a mural. There is mixed land use in the vicinity.

2.0 Proposed Development

- 2.1. The proposed development comprises a streetpole solution to address identified mobile and mobile broadband coverage blackspots.
- 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. 11 metres which increases slightly in width to 406mm in the upper area of the pole. A 0.6 metre diameter dish is attached at a height of approx. 10 metres. The 2G, 3G and 4G compatible antenna will be shrouded in a sheath to match the pole. 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 cover letter.
- 2.4. Further information was submitted in relation to, inter alia, a technical justification for the site selection, justification for the proposed 15 metres height including a Visual Impact Assessment, removal of the external dish, parking solutions and foundation detail.

3.0 Planning Authority Decision

3.1. Decision

The application was refused for one reason as follows.

1. It is considered that the granting of a licence under Section 254 of the Planning & Development Act, 2000 (as amended), for the erection of fifteen metre high

telecommunications structure and associated electrical cabinet, would be contrary to the proper planning and sustainable development of the area having regard to the fact that the subject site is located on an elevated and exposed sub-urban site, in close proximity to a scout den, a hospital/care home, a number of protected structures and numerous residential properties, in circumstances where the proposal has not been subject of formal public notification and there has not been an opportunity for formal public engagement or submissions.

3.2. Planning Authority Reports

3.2.1. The first Planning Report concluded that a further information request was appropriate. This was prepared by an Executive Planner and countersigned by a Senior Executive Planner. The second Planning Report, based on the further information response, was prepared by the Executive Planner. A grant of permission was recommended, subject to conditions, having regard to the nature of the development proposed, the zoning provisions and the type of development in the vicinity of the site.

3.2.2. However, a Senior Planner recommended to the Director of Services that, notwithstanding the Executive Planner's recommendation, permission should be refused. The rationale for this was that 'the subject proposal is not suitable for licencing under section 254 of the Planning and Development Act, 2000 (as amended) and should instead be subject to assessment under Part III of the Act, having regard to the nature and scale of the proposal, as well as it's exposed location and proximity to community facilities, a healthcare facility, a number of protected structures and numerous residential properties'.

3.2.3. The application was refused for the reason set out in the Senior Planner's recommendation.

3.2.4. Other Technical Reports

District Engineer – The first Planning Report states the District Engineer required further information in relation to land owner consent, parking availability, foundations, and the size of the kiosk. This District Engineer's report has not been forwarded to the Board.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

N/A

4.0 **Planning History**

None.

5.0 **Policy Context**

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

- 5.1.1. These guidelines, and the subsequent Circular Letter PL 07/12, are relevant to applications for telecommunications structures. In addition, Circular Letter PL 11/20 has been referred to in the grounds of appeal.

5.2. **Waterford City Development Plan 2013-2019**

- 5.2.1. Following the amalgamation of Waterford County Council and Waterford City Council in 2014, the lifetimes of the existing development plans within the amalgamated council area were extended. The 2013-2019 City Development Plan remains in effect until a new City & County Development Plan is prepared following the making of the Regional Spatial & Economic Strategy.
- 5.2.2. The area both sides of John's Hill to the north of the site is primarily zoned 'Community Facilities'. The area immediately south of the site is primarily zoned 'Developed Residential' with some 'Community Facilities' and 'Open Space' (St. Anne's Tennis Club) zoning. The specific site itself i.e. the footpath, appears to be outside any zoning designation.

- 5.2.3. Telecommunications is referenced in Section 3.4.12 (Industry & Enterprise Policy & Objectives). 'Telecommunications structures and equipment' are listed in Section 12.16 (Schedule of Land Uses) in existing residential, community facility and open space areas.
- 5.2.4. Section 8.9 of Variation No. 1 (Development Management Standards) states that, in evaluating applications for telecommunications installations, regard will be had to the 1996 Guidelines. Co-location is favoured.

5.3. **Natural Heritage Designations**

- 5.3.1. The closest heritage area is the Natura 2000 site Lower River Suir SAC (Site Code 002137) approx. 700 metres to the north east.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The main points made can be summarised as follows:

- The applicant is concerned and troubled at the planning authority's lack of understanding of the s254 licencing process, particularly in relation to comments relating to public notification and engagement. These elements are not required in legislation and should not be included in deliberations. By refusing to issue a licence on this basis the applicant contends the Authority is exceeding its powers to circumvent legislation. The principles of the avoidance of bias, a requirement for an open and transparent process and consistency in approach were not applied.
- The proposed development is consistent with the description of suitable development contained in the Green Book ('Guidance on Potential Location of Overground Telecommunications Infrastructure on Public Roads' (2015)) and endorsed by the National Broadband Taskforce.
- The development described in Circular Letter PL 11/2020 issued by the Dept. of Housing, Local Government and Heritage is clearly exempt from the

requirement to achieve formal planning permission. It is exempt from planning permission under s254(7) of the Act and neither scenario where the exemption would not apply i.e. where there is a requirement for appropriate assessment or where the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users, are present. The planning authority considered it impossible to approve the licence due to a lack of public consultation, a scenario not envisaged in the guidance or legislation. By refusing permission the planning authority is failing to uphold the fundamentals of the Development Management Guidelines for Planning Authorities to be guided by planning and other relevant Government and ministerial policies. Adequate safeguards are in place to protect the amenity of an area and the rights of the individual, including the right to appeal.

- The authority's description of the site location in the reason for refusal is concerning as it implies these locations are ringfenced in some way to prevent telecoms development. Impact on protected structures is within established patterns for urban streetscapes and not sufficient grounds for refusal.
- The development is not inconsistent with the objectives of the City Development Plan, the 1996 Guidelines or Part IV of the Planning & Development Act, 2000 (as amended). Policies POL 3.4.5 and 3.4.6 of the Plan, supportive of telecommunications infrastructure, are set out.
- The Guidelines suggest the installation of infrastructure is possible in all sensitive areas provided the design is suitable for its receiving environment. The Guidelines do not exclude siting development in residential areas or alongside hospitals or community facilities. Where required as a last resort the siting of suitably adapted pole infrastructure is acceptable in all locations. None of the locations cited in the refusal reason individually or collectively prevent the rollout of telecoms infrastructure. Circular Letter PL 11/2020 endorses the use of street poles in urban roadside locations.
- Section 12.16 of the City Development Plan deems telecommunications structures and equipment appropriate in existing residential, open space and community facility areas. The type, size and scale of development proposed

i.e. a slimline pole, is consistent with structures described as suitable for deployment in residential areas in current guidance documents.

- Blackspots emerge where infrastructure fails to provide coverage. Eir has proposed a solution at the centre of its blackspot. The further information response established the lack of suitable co-location infrastructure and/or alternative locations. Six sites are identified in the wider area and Eir are located on four of them. They are incapable of being expanded to provide service to the blackspot. As a last resort this application was proposed. The location proved to be most suitable due to its elevation and lack of structures, overhead lines and trees. A site in another location in the immediate area would require a minimum 30 metres height to provide identical coverage. The structure was the minimum height required and least impactful. The footpath is wide enough to take the structure without impeding passage, obstructing sightlines or underground services, it is not overly visually dominant, there are no direct views from residential development, difficult to achieve in a suburban context, and is not impactful on protected structures.
- The Guidelines describes minimum effective height and states the choice of location is dependent on the operator's network requirements. Detailed consideration was given to both.
- Any development in a city like Waterford will need to be sited with sensitivity, however it should not and does not prevent new development. The development is not on, within or abutting a protected structure, is not visually dominant or impactful on the four protected structures in proximity and there are no direct views anticipated. Health and safety is not a matter for the Board. The type, size and scale of the proposed development is consistent with structures described as suitable in current guidance.
- The planning authority decision fails to consider the positive impact of telecommunications and interconnectivity. Access to digital services is desirable. There has been an increase in the number of people working from home. The benefits outweigh any perceived impact on the character of the area. The availability of mobile services is beneficial to the amenity of an area, provided its visual impact is within reasonable parameters.

- A number of appendices are attached to the grounds of appeal including a copy of a similar decision made by the planning authority under P.A. Reg. Ref. 19/725, a 'Site Coverage Report Alternative Locations' document, photomontages from five viewpoints and a 'Study on the Impact of Covid-19 on Home Broadband and Mobile Service Usage' report prepared for ComReg dated September 2020.

6.2. **Planning Authority Response**

None.

6.3. **Observations**

None.

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
- Compliance with the Waterford City Development Plan 2013-2019 and Section 254(5)
- Planning Authority Reason for Refusal
- Duration of Licence
- 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 site is a blackspot for mobile and wireless broadband.

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 under this section. Section 254(6)(a) states that any person may appeal to the Board in relation to the granting, refusing, withdrawing or continuing 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 section 2(1) of the Roads Act, 1993 (as amended). The site is located on the footpath; a footpath is included in subsection (a) of the definition of a 'road'. Therefore, I consider section 254 is the appropriate mechanism for the proposed development.

7.3. Compliance with the Waterford City Development Plan 2013-2019 and Section 254(5)

7.3.1. Section 254(5) outlines four issues the Board shall have regard to. Subsection (b) is 'any relevant provisions of the development plan, or local area plan'.

7.3.2. The relevant Plan is the Waterford City Development Plan 2013-2019. Policy POL 3.4.6 is supportive of telecommunications infrastructure in the context of industry and enterprise. Policy POL 3.4.7 states that, in proposals for telecommunications facilities, regard will be had to the 1996 Guidelines. In the Schedule of Land Uses, telecommunications structures and equipment are listed under existing residential,

community facilities and open space; all zoning areas in the vicinity of the site. Section 8.9 (Telecommunications) of Variation No. 1 of the Plan also states regard will be had to the 1996 Guidelines in evaluating applications for telecommunications installations.

7.3.3. The relevant guidelines are the 'Telecommunications Antennae and Support Structures Guidelines for Planning Authorities' (1996). The proposed structure is a 15 metres high slimline pole. The Guidelines state that, in the vicinity of larger towns and city suburbs, operators should endeavour to locate in industrial estates or in industrially zoned land. Commercial or retail areas are also referenced as are ESB substations, tall buildings, and existing structures. 'Only as a last resort and if the alternatives suggested ... are either unavailable or unsuitable should free-standing masts be located in a residential area or beside a school'. In such locations the support structure should be kept to the minimum height consistent with effective operation and should be monopole. In this regard the applicant has stated the height is the minimum height necessary and the structure proposed is a monopole.

7.3.4. The proposed operator is Eir and the site is required to improve network coverage. The applicant considers that there is no other telecommunications site within the search ring. A technical justification for the development was submitted as part of the further information response. The ComReg SiteViewer map shows no existing telecommunications structure within approx. 700 metres of the site and Eir is already located on the closest structure. Therefore there are no existing sites within the 500 metres search ring that could be utilised. Seven alternative non-telecommunications sites were considered. These are in institutional, residential, commercial and sports ground use. There are no industrial and very few commercial buildings in the search ring. These sites were discounted for reasons including the protected structure status of buildings and curtilages, absence of a flat roof, the healthcare use and residential nature of some sites, the educational use of a site and, notwithstanding an initial meeting with a management member of St. Anne's Tennis Club, they subsequently proved uncontactable. A site within the residential area to the south east would have difficulty satisfying radio engineering criteria given the lower ground level and lack of a satisfactory structure. The applicant submitted that the site was the only one which would satisfy radio engineering parameters. The applicant also stated that the 15 metres height is required 'to allow for a sleek structure as opposed to a structure with reduced height but with a bulky head frame'. I consider, from a visual perspective, that

the slightly increased height is acceptable rather than a slightly reduced height with a bulky head frame as illustrated in the further information response. Photomontages were submitted with the further information response.

- 7.3.5. Having regard to the relevant plans and particulars submitted with the planning application, the response to the further information request and the grounds of appeal, I consider that the proposed development would be compliant with the relevant provisions of the Waterford City Development Plan 2013-2019 which is generally supportive of such development. The Plan also requires regard to be had to the 1996 Guidelines, which have been referenced above. Therefore, I consider the development would comply with the relevant provisions of the development plan as required under section 254(5) (b) of the Planning & Development Act, 2000 (as amended).
- 7.3.6. Section 254(5) also contains subsections (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, that shall be considered. In relation to (c) there is an existing cabinet on the wall. It is painted as part of the mural. There are standard traffic signals, public lighting, overhead poles and wires and limited signage. I do not consider there is an overconcentration of appliances, apparatuses, or structures along the road, or that the proposed development would unacceptably increase the number of such appliances etc. In relation to (d), the structure would have no impact on the convenience and safety of road users. The structure may briefly be of visual interest but would then become an accepted and normal part of the urban streetscape. These structures are becoming more common. There would be no impact on pedestrian activity given the location adjacent to the wall on a very wide footpath. Having regard to the foregoing, the proposed development would, overall, be in accordance with the proper planning and sustainable development of the area (s254(5)(a)).
- 7.3.7. Therefore I also consider the development would comply with subsections (a), (c) and (d) of section 254(5) of the Act, 2000 (as amended).

7.4. Planning Authority Reason for Refusal

- 7.4.1. The planning authority's reason for refusal is set out under Section 3.1, above. There are different elements to the reason for refusal; the use of the section 254 process, the elevated and exposed suburban site and proximity to certain land uses.
- 7.4.2. As set out in Section 7.2 of this Assessment I consider that the section 254 process is the appropriate mechanism for an application of this type. Overground electronic communications infrastructure is proposed on the public road. The procedure for such an application is set out in the legislation and there are four specific elements that the planning authority shall have regard to. There is no provision for public participation and therefore, the fact that it has 'not been subject of formal public notification and there has not been an opportunity for formal public engagement or submissions' is not relevant. I consider the planning authority was not entitled to refuse permission for the licence on this basis.
- 7.4.3. The planning authority considers the site location to be elevated and exposed. I do not concur with this assessment of the site location. The site is at a standard urban/suburban signalised junction. While the site could be considered to be somewhat elevated on approach from the west, I do not consider that it is so elevated or exposed that this would be a reasonable reason for refusal on this basis. The structure will be very visible on the streetscape. However, a visual impact is unavoidable with telecommunications infrastructure such as this.
- 7.4.4. The specific land uses cited in the reason for refusal are all located within the vicinity of the site and there are also protected structures. The City Development Plan and 1996 Guidelines do not state that this type of development cannot be located adjacent to any specific land use and Section 12.16 lists telecommunications structures and equipment in the relevant Schedule of Land Uses. The site is a public footpath and the plans and particulars submitted with the application considered and discounted other possible alternative locations. There are no existing telecommunications sites or industrial lands within the required search area. I consider the site location is acceptable for the development having regard to the documentation submitted with the application and it would not have any undue adverse impact on the surrounding land uses or the protected structures.

7.4.5. Having regard to the foregoing, I do not consider the reason for refusal as set out by the planning authority is reasonable. The licence process is appropriate, and the proposed development would be consistent with the four elements to be considered under section 254(5) of the Planning & Development Act, 2000 (as amended).

7.5. Duration of Licence

7.5.1. The applicant sought a ten year licence as set out in the Application for Licence form (01.08.2019 – 31.08.2029). Section 2.2 of Circular Letter PL 07/12 states that ‘attaching a condition to a permission for telecommunication masts and antennae which limit their life to a set temporary period should cease’ except in exceptional circumstances. Therefore, I consider a ten year licence is reasonable.

7.6. Appropriate Assessment

7.6.1. Having regard to the nature and scale of the development proposed, a telecommunications structure and associated equipment, and to the nature of the receiving environment, namely an urban location remote from and with no hydrological or ecological pathway 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

I recommend that a licence should be granted subject to conditions, for the reasons and considerations as 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 Waterford City Development Plan 2013-2019, and the Telecommunications Antennae and

Support Structures Guidelines for Planning Authorities (1996), 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 Waterford City Development Plan 2013-2019, would not impede the convenience and safety of road users, including pedestrians, and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 10th day of February 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) This licence shall apply for a period of ten years from the date of this order. The telecommunications structure and related ancillary structures shall then be removed unless, prior to the end of the period, continuance shall have been granted for their retention for a further period.

(b) The site shall be reinstated on removal of the telecommunications structure and ancillary structures. Details relating to the removal and reinstatement shall be submitted to, and agreed in writing with, the planning authority at least one month before the date of expiry of this licence.

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

3. 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 permission.

Reason: To clarify the nature and extent of the permitted development to which this permission relates and to facilitate a full assessment of any future alterations.

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

Reason: In the interest of public health.

5. A low intensity fixed red obstacle light shall be fitted as close to the top of the mast as practicable and shall be visible from all angles in azimuth. Details of this light, its location and period of operation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public safety.

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

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

Anthony Kelly

Planning Inspector

07.07.2021