



An
Bord
Pleanála

Inspector's Report ABP-310950-21

Development	Section 254 Licence to install a telecommunications infrastructure on public land
Location	Ninch, Laytown, Co.Meath.
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	TRA 10 08 05
Applicant(s)	Signal Infrastructure Limited.
Type of Application	Section 254 Licence.
Planning Authority Decision	Grant Licence.
Type of Appeal	First Party v Condition
Appellant(s)	Signal Infrastructure Limited.
Observer(s)	None.
Date of Site Inspection	27 th April 2022.
Inspector	Elaine Sullivan

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1.0 Site Location and Description

- 1.1. The subject site is located on public land within the village of Laytown. It is located on the western side of the R150, directly opposite the Laytown Race Course and to the south on an existing bus shelter.
- 1.2. Development to the south, east and north is predominantly residential in nature. The entrance to Inse Bay housing development is directly to the north of the site. Within this development, the houses forming The Dale to the north-east of the site and The Close to the south-east are the closest in proximity to the proposed development. A row of detached houses facing onto the R150 are directly to the north of the site. On the opposite side of the road and to the north of Laytown Race Course, is a row of detached single-storey houses set back from the public road.

2.0 Proposed Development

- 2.1. The applicant is applying for a licence to the installation and operation of an infrastructure pole and associated operator cabinet. The development proposal is for the installation of an 15m freestanding galvanised pole with a diameter of 324mm to 402mm and with internal cables. At a height above 11.1m an antenna would be fixed to the pole and would be shrouded in a sheath to match the pole.
- 2.2. A ground mounted cabinet with a footprint of 0.92m² and a height of 1.649m would be installed beside the pole and would be painted green.

3.0 Planning Authority Decision

3.1. Decision

The PA decided to grant permission for the licence subject to 15 no. planning conditions, which were mostly standard in nature.

- Condition No. 1 restricted the period of the licence to three years from the date of issue of the licence by the PA.
- Condition No. 10 is the subject of the appeal and states the following:

The developer shall provide the following information to all landowners within a 100m radius of the proposed development: the name and contact details of the developer, the nature of the proposed development, the impact the development will have on their property, replies addressing any submissions received, and information on the appeals process.

Reason: In the interest of transparency.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer dated the 27th July 2020 informed the decision of the PA and includes the following:

- From a visual perspective, the site has the capacity to accept the proposed pole, antenna and associated equipment.
- The structure, in combination with existing public utility poles would not have a significant impact or alteration to the existing views along the public road and towards the site.
- The Visual Impact Assessment demonstrates that the proposed pole would not have a harmful visual impact on any view point.

3.2.2. Other Technical Reports

- No other reports on file.

3.3. Prescribed Bodies

- No responses on file.

3.4. Third Party Observations

- None.

4.0 Planning History

- None.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is located within the administrative boundary of Meath County Council. The operative Development Plan for the area is the Meath County Development Plan, (CDP), 2021-2027, which came into effect on the 3rd November 2021.
- 5.1.2. The application was assessed by Meath County Council in accordance with the policies and objectives of the Meath County Development Plan 2013-2019, which was the operative Development Plan at the time.
- 5.1.3. On review of the contents of both plans I note that there are no material changes between the 2013 County Development Plan and the 2021 County Development Plan as they relate to the appeal site and the current proposal. In this regard I consider the proposal in accordance with the guidance and provisions of the operative Development Plan, namely the 2021 – 2027 Meath County Development Plan, (MCDP)

The subject is located on unzoned land in the public realm and within the boundary of Laytown.

The following sections of the MCDP are of relevance to the proposed development:

6.16.3 – Broadband

- INF OBJ 51 – To support the delivery of and implementation of the National Broadband Plan.

6.16.4 – Telecommunications Antennae

- INF POL 54 - To facilitate the delivery of a high-capacity Information and Communications Technology (ICT) infrastructure and broadband network and digital broadcasting throughout the County.
- INF OBJ 56 - To promote orderly development of telecommunications infrastructure throughout the County in accordance with the requirements of the “Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities” July 1996, except where they conflict with Circular Letter

PL 07/12 which shall take precedence, and any subsequent revisions or expanded guidelines in this area.

- INF POL 57 - To promote best practice in siting and design in relation to the erection of communication antennae, having regard to 'Guidance on the potential location of overground telecommunications infrastructure on public roads', (Dept of Communications, Energy & Natural Resources, 2015).

5.2. National Guidance

5.2.1. National Planning Framework – Project Ireland 2040

Objective 24 – 'Support and facilitate delivery of the National Broadband Plan as a means of developing further opportunities for enterprise, employment, education, innovation and skills development for those who live and work in rural areas.'

5.2.2. Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996)

The guidelines aim to provide a modern mobile telephone system as part of national development infrastructure, whilst minimising environmental impact. Amongst other things, the Guidelines advocate sharing of installations to reduce visual impact on the landscape.

4.3 – Visual Impact - The guidelines note that visual impact is one of the more important considerations which have to be taken into account and also that some masts will remain quite noticeable in spite of the best precautions.

4.5 – Sharing Facilities and Clustering – Applicants will be encouraged to share facilities and to allow clustering of services and will have to satisfy the Planning Authority that they have made a reasonable effort to share.

5.2.3. Guidance on the Potential Location of Overground Telecommunications Infrastructure on Public Roads, (Dept. of Communications, Energy and Natural Resources, 2015).

This report provides advice to telecommunications operators as to how telecommunications infrastructure could be accommodated along all road types.

Table A – Stand-alone poles are the preferred option in urban areas.

5.2.4. **DoECLG Circular Letter PL07/12**

This Circular was issued to Planning Authorities in 2012 and updated some of the sections of the above Guidelines including ceasing the practice of limiting the life of the permission by attaching a planning condition.

It also reiterates the advice in the 1996 Guidelines that planning authorities should not determine planning applications on health grounds and states that, *'Planning authorities should be primarily concerned with the appropriate location and design of telecommunications structures and do not have competence for health and safety matters in respect of telecommunications infrastructure. These are regulated by other codes and such matters should not be additionally regulated by the planning process'*.

5.2.5. **DoHELG Circular Letter PL 11/2020**

This circular provided clarification in relation to the planning exemptions applicable to telecommunications works undertaken by statutory undertakers authorised to provide telecommunications services.

5.2.6. **Development Management Guidelines for Planning Authorities**

Chapter 7 – Drafting Planning Conditions

Planning conditions should be:

- Necessary – i.e. whether, without the condition, either permission for the development would have to be refused, or the development would be contrary to the proper planning and sustainable development in some identifiable manner.

- Relevant to planning – the requirements of a condition should be directly related to the development to be permitted or the condition may be ultra vires and unenforceable.
- Relevant to the development permitted
- Enforceable – conditions should be effective and capable of being complied with.
- Precise – every condition should be precise and understandable.
- Reasonable - a useful test of reasonableness may be to consider whether a proposed condition can be complied with by the developer without encroachment on land that he or she does not control, or without otherwise obtaining the consent of some other party whose interests may not coincide with his/hers.

5.3. **Natural Heritage Designations**

- No designations apply to the subject site.

5.4. **EIA Screening**

- 5.4.1. An Environmental Impact Assessment Screening report was not submitted with the application. The proposed development is not listed in either Part 1 or Part 2 of Schedule 5, Planning and Development Regulations 2001 (as amended), which sets out the types and thresholds of development that requires a mandatory EIA. The proposal has also been assessed against the criteria outlined in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and the provisions of Article 109, (3) of the Regulations.
- 5.4.2. Under the provisions of Article 109, (3) of the Regulations, it is noted that the site is not located within a European site, is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site as discussed below.
- 5.4.3. The proposed development is minor in nature and scale and not require any significant ground works or construction. I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not

be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case. (See Preliminary Examination EIAR Screening Form).

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal, as raised in the submission from the first party appellant can be summarised as follows:

- Condition No. 10 is excessively onerous and places a considerable burden on the Company.
- Public notification, pre or post, application is not a requirement of Section 254 of the Act, which requires plans and particulars to be furnished to the Planning Authority for review by a suitably qualified person, with no reference to public notification, (S. 254, (3)).
- The PA's reasoning for imposing Condition No. 10 is to ensure a transparent process due to the lack of a requirement for public notification in the S. 254 process. However, this should not lead to ad hoc processes or onerous conditions.
- There is a fundamental difference in the nature of a Section 254 licence and the planning application process which requires public consultation.
- A Section 254 licence is a temporary licence for utility infrastructure within the public realm which can be withdrawn or appealed at any time within the licence period. Whereas planning permission usually relates to a permanent change in the receiving environment.
- There are also safeguards in place in the legislation to allow third parties to be heard by the Board for the duration of the licence period. Section 254, (6), states that:

- a. Any person may, in relation to the granting, refusing, withdrawing or continuing of a licence under this section or to the conditions specified by the planning authority for such a licence, appeal to the Board.*
- b. Where an appeal under this section is allowed, the Board shall give such directions with respect to the withdrawing, granting or altering of a licence under this section as may be appropriate, and the planning authority shall comply therewith.*
- The inclusion of Condition No. 10 is unnecessary as the interests of nearby residents are protected by the County Development Plan, the internal planning review process and by the right to appeal enshrined within the Act.
 - By using Condition No. 10 to effectively extend the deliberations of the merits and impacts of the permitted development, beyond the decision of the PA to issue a licence, the PA is unwittingly creating doubt as to the veracity of its own expertise and decision making.
 - Transparency could be better achieved by publishing Section 254 decisions on a public forum such as the Council website, in the same manner as planning application decisions.
 - A condition which effectively obligates the ongoing assessment of the developments impact within an arbitrary zone, post-consent and potentially post-construction is beyond the scope of what is considered reasonable.
 - Condition No. 10 requires that all landowners be informed of the 'impact the development will have on their property'. As there is no question of an environmental or health impact, or impact on safe passage or on the road, it is assumed that the anticipated impact is visual.
 - A Visual Impact Assessment was included with the initial application and a revised position was agreed with the Council in order to accommodate a cycleway.
 - Visually, the design compares favourably with other infrastructure in the area and the report of the PO noted that the proposal would not be visually intrusive.

- A revised Visual Impact Assessment showing a 100m radius was submitted with the appeal. The assessment also shows a line of sight from the nearest houses to direct potential visibility. The assessment shows that only one house within the 100m radius would experience any degree of impact.
- Condition No. 10 is not in accordance with the guidance for planning conditions as set out in Section 7.3 of the Development Management Guidelines for Planning Authorities, 2007.

6.2. Planning Authority Response

- No comments were issued regarding the grounds of appeal.

6.3. Observations

- No observations.

7.0 Assessment

7.1. Principle of Development

- 7.1.1. This is a first-party appeal only against Condition No. 10 attached to the Planning Authority's decision to grant a licence under Section 254 of the Planning and Development Act 2000 (as amended). Condition No. 10 requires that the developer engage with all landowners within a 100m radius of the proposed development to provide the name and contact details of the developer, the nature of the proposed development, the impact the development will have on their property, replies addressing any submissions received, and information on the appeals process.
- 7.1.2. Having regard to the nature and scale of the proposed development and the nature of condition no. 10, it is considered that the determination by the Board of the application, as if it had been made to it in the first instance, and that a *de novo* assessment would not be warranted. Therefore, the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.

7.2. Condition No. 10

7.2.1. Condition No. 10 states the following:

The developer shall provide the following information to all landowners within a 100m radius of the proposed development: the name and contact details of the developer, the nature of the proposed development, the impact the development will have on their property, replies addressing any submissions received, and information on the appeals process.

Reason: In the interest of transparency.

7.2.2. Under Section 254 of the Planning and Development Act 2000, (the Act), as amended, Planning Authorities are responsible for the issuing of licences for the placement of overground electronic communications infrastructure and any associated physical infrastructure on public roads. Within Section 254, there is no mechanism for third party consultation during the application stage. However, Section 254, (6), (a) does provide a mechanism whereby decisions made by the PA under this can be appealed to An Bord Pleanála. There is no time limit for such appeals to be lodged.

7.2.3. In the assessment of the issues at hand, I have had regard to the criteria set out in Section 7 of the Development Management Guidelines, which gives guidance on the most effective and concise manner of attaching planning conditions. Section 7.3.1 of the Guidelines recommends that a test be applied to determine whether, without the condition the proposed development would have to be refused or the development would be contrary to the proper planning and sustainable development in some identifiable manner. If it is to be justified, it ought to do some good in terms of achieving a satisfactory standard of development and in supporting objectives of the development plan.

7.2.4. Having considered the details of the proposed development and the Development Management Guidelines, it is my view that the condition is unnecessary as, it does not contribute in any way to achieving a satisfactory standard of development or supporting the objectives of the development plan. Furthermore, the condition is overly onerous on the part of the developer as it requires the developer to enter into a public consultation or information exercise following the issuing of a decision by the PA.

7.2.5. In its assessment of the development, and in accordance with Section 254 (5) the PA would have had regard to

- *the proper planning and sustainable development of the area,*
- *any relevant provisions of the Development Plan, or a Local Area Plan,*
- *the number and location of existing appliances, apparatuses or structures on, under, over or along the public road, and*
- *the convenience and safety of road users including pedestrians.*

7.2.6. The condition requires that the developer state what the impact of the proposal will be on all houses within a 100m radius. However, it is the function of the PA to assess the development and to determine what the impact of the proposal would be, not the developer. In the assessment of the development the PA would have considered the full impact of the proposal in terms of its nature and scale and any visual impact it would have on nearby residential development. The report of the Planning Officer determined that *'Given the design and slender nature of the proposed telecommunications pole it is not considered that the proposal would impact on the visual amenity or visual character of the area'*.

7.2.7. The PA has determined that the proposed development would not have an impact on the visual amenity or visual character of the area. Therefore, it is unclear as to why the developer would be required to contact each landowner to inform them of this decision. The basis of the condition appears to be grounded in concern regarding the transparency of the Section 254 process and third-party participation. However, I would agree with the grounds of appeal that the condition as worded, serves to undermine the decision-making process, which is set out in the legislation. I note that no time frame for compliance with the condition has been attached which would render the condition unenforceable.

7.2.8. The requirement to contact each landowner within a 100m radius also places an onerous burden on the developer. The applicant argues that the 100m radius has been arbitrarily applied. In the grounds of appeal, the applicant has resubmitted the Visual Impact Assessment of the development which also includes a Line of Sight study to predict potential visibility from the neighbouring houses. The study suggests that, due to the orientation of the houses, only 2 out of circa 20 houses within the

100m cordon would experience partially direct views of the pole. Furthermore, the study predicts that only one of the adjacent residents within the 100m cordon will have any degree of impact, which negates the PA's requirement to carry out individual impact assessments on twenty properties. If the PA had concerns regarding the impact of the development, the correct mechanism for addressing the concerns would have been through a request for further information. I note that the initial location of the pole was amended during the application process following a request from the PA.

- 7.2.9. I would agree that the requirement to contact all landowners within a 100m radius is overly onerous and it is not grounded in logic. Given the reason stated for the condition, it may be that case that the PA is seeking to inform the public of their third-party rights to appeal the licence should they so wish. However, I would argue that informing the general public of their statutory rights to appeal is not up to the developer. Furthermore, the condition also requires the developer to engage with 'replies addressing any submissions received'. I would also argue that it is highly unusual to require a developer to engage directly with third parties and nearby residents after a decision on the development has been issued by the PA.
- 7.2.10. I am satisfied that in the assessment of the development that the PA would have considered the nature of the proposed development and the impact the development will have on nearby residential development. Therefore, the obligations of the developer as required by Condition No. 10 are unnecessary and onerous.

7.3. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance to the nearest European site, no Appropriate Assessment issues arise and it is considered that the proposed development would not 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 Condition 10 be removed.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to REMOVE condition number 10 and the reason therefore as follows:

REASONS AND CONSIDERATIONS

Having regard to the nature and scale of the proposed development for a Section 254 Licence for a 15m telecommunications pole with associated ground mounted cabinet to be located within the public realm, it is considered that, the requirement to contact all landowners within a 100m radius and inform them of the development, the impact of the development on individual properties, to reply to submissions received and inform third parties of the appeals process, following the issuing of the a decision by the PA, would be unnecessary, unreasonable, and overly onerous. It would, therefore, be in accordance with the proper planning and sustainable development of the area.

Elaine Sullivan
Planning Inspector

9th May 2022