



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311679-21

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<b>Development</b>	Section 254 Licence for telephone mast
<b>Location</b>	77 Barton Road East, Dublin 14, D14 N668
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	CRM230007
<b>Applicant(s)</b>	Signal Infrastructure Ltd.
<b>Type of Application</b>	Section 254 Licence
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Lorcan Quinn
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	09 August 2022
<b>Inspector</b>	Gillian Kane

## **1.0 Site Location and Description**

- 1.1. The subject site is located on the eastern side of a short residential road running south from Barton Road East to Meadow Grove, in the south Dublin suburb of Dundrum, Dublin 14.
- 1.1.1. The site comprises an area of soft landscaping to the side of the public road, adjoining the side of no. 77 Barton Road East. A footpath runs through the soft grassed area. The subject pole and associated cabinet are located to the right (east) of the footpath.

## **2.0 Proposed Development**

- 2.1. On the 10<sup>th</sup> June 2021, a licence under section 254(1)(g)subsection 5(a) of the Planning and Development Act 2000, as amended was sought for the installation of communications infrastructure in the form of a Smart Streetpole and operator cabinet. The proposed pole has an approx. diameter of 324mm and height of 11.3m, above which will sit a mobile antenna bringing the overall height to 15m. The proposed antenna is to be shrouded in a 406mm sheath matching the pole.
- 2.2. The application was accompanied by a Site Location Justification Report.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. On the 23<sup>rd</sup> July 2021 a licence was issued subject to 21 no. conditions.

### **3.2. Planning Authority Reports**

- 3.2.1. Memo from Planning to Transportation Department: Subject site is appropriate location but if developed would negatively impact the future development potential of the lands. Would not be visually incongruous, no impact on visual or residential amenity. Proposed development is compliant with development plan policy. Planning department has no objection to the issuing of the licence.

## 4.0 Policy Context

### 4.1. National Planning Framework – Project Ireland 2040

- 4.1.1. 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.’

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

- 4.2.1. The ‘*Guidelines for Planning Authorities on Telecommunications Antennae and Support Structures*’ (1996) set out government policy for the assessment of proposed new telecommunications structures (‘the 1996 Guidelines’). The Guidelines state that the rapid expansion of mobile telephone services in Ireland has required the construction of base station towers in urban and rural areas across the country. This is an essential feature of all modern telecommunications networks. In many suburban situations, because of the low-rise nature of buildings and structures, a supporting mast or tower is needed.
- 4.2.2. Section 4.3 of the Guidelines refers to visual impact and states that only as a last resort should free-standing masts be located within, or in the immediate surrounds, of smaller towns or villages. If such locations should become necessary, sites already developed for utilities should be considered, and masts and antennae should be designed and adapted for the specific location.
- 4.2.3. The support structure should be kept to the minimum height consistent with effective operation. The Guidelines also state that visual impact is among the more important considerations that should be considered assessing a particular application. In most cases, the Applicant will only have limited flexibility as regards location, given the constraints arising from radio planning parameters, etc. Visual impact will, by definition, vary with the general context of the proposed development.
- 4.2.4. The Guidelines state that the approach will vary depending on whether a proposed development is in:
- a rural/agricultural area;
  - an upland/hilly, mountainous area;
  - a smaller settlement/village;
  - an industrial area/industrially zoned land; or

- a suburban area of a larger town or city.

4.2.5. The Guidelines state that some masts will remain quite noticeable despite best precautions. For example, there will be local factors which have to be taken into account in determining the extent to which an object is noticeable or intrusive. This may include intermediate objects (buildings or trees), topography, the scale of the object in the wider landscape, the multiplicity of other objects in the wider panorama, the position of the object with respect to the skyline, weather, lighting conditions, etc. Softening of the visual impact can be achieved through a judicious choice of colour scheme and through the planting of shrubs, trees etc as a screen or backdrop.

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

4.3.1. 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.

#### **4.4. DoECLG Circular Letter PL07/12**

4.4.1. 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'.

4.4.2. It advises Planning Authorities to:

- Cease attaching time limiting conditions or issuing temporary durations to telecommunications masts, except in exceptional circumstances.
- Avoid including minimum separation distances between masts or schools and houses in Development Plans.

- Omit conditions on planning permissions requiring security in the form of a bond/cash deposit.
- Not include monitoring arrangements on health and safety or to determine planning applications on health grounds.
- Include waivers on future development contribution schemes for the provision of broadband infrastructure.

#### 4.5. DoHELG Circular Letter PL 11/2020

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

4.5.2. It advises Planning Authorities that:

- Section 254 of the Act outlines the provisions in relation to the licensing of appliances and cables etc on public roads. Where development of a type specified in section 254(1) of the Act is proposed to be carried out on a public road, approval for the works is required from a Planning Authority by means of the obtaining of a section 254 licence.
- A Section 254 Licence is required for overground electronic communications infrastructure and its associated works, and that such works are exempt from planning permission.
- The exemptions for telecommunications infrastructure along public roads do not apply:
  - (a) where the proposed development is in sensitive areas where there is a requirement for Appropriate Assessment.
  - (b) where the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users.

4.5.3. Section 254(5) of the Act outlines the criteria to which the Planning Authority shall have regard in assessing such proposals:

- 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.

#### 4.6. **Dun Laoghaire Rathdown County Development Plan 2022-2028**

- 4.6.1. **Policy Objective E2:** Knowledge Economy: It is a Policy Objective to promote the development of knowledge-based enterprise in the County.
- 4.6.2. **Policy Objective EI20:** Telecommunications Infrastructure: It is a Policy Objective to promote and facilitate the provision of an appropriate telecommunications infrastructure, including broadband, fibre optic connectivity and other technologies, within the County.
- 4.6.3. **Section 12.9.8** refers to Telecommunications. It states that “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 08/12 issued by the Department of the Environment and Local Government (as may be amended from time to time), 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 1km 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.
  - To what degree 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.
  - Any impacts on rights-of-way and walking routes.
  - That the proposal shall not have a significant negative visual impact.

#### 4.7. **Natural Heritage Designations**

4.7.1. No designations apply to the subject site.

### 5.0 **The Appeal**

#### 5.1. **Grounds of Appeal**

5.1.1. The owner / resident of no. 77 Barton Road East has appealed the decision of Dun Laoghaire Rathdown County Council to grant the licence. The grounds of the appeal can be summarised as follows:

- Work started on the development long before the licence was granted – email & photo submitted.
- The pole is not located on the public footpath or road as required by legislation. The land on which the pole site is not registered in Council ownership – land registry details submitted.
- No notice of the works was given.
- Legislation requires a mast not exceeding 12m at this location.
- No road opening licence was issued.
- No evidence of insurance cover for public liability.
- The work commenced at 7am on the 25<sup>th</sup> September 2021. The road was cordoned off with no health and safety equipment offered to residents.
- There is an existing lighting pole that could have been used or other ways of disguising masts.

#### 5.2. **Applicant Response**

5.2.1. An agent for the applicant responded to the third-party appeal, the details of which can be summarised as follows:

- The licence was granted as the development conforms with section 254 of the Act, with national and EU Broadband directives, the current County Development Plan and the 1996 Telecommunications Guidelines.

- The temporary licence to install minimal utility development at a roadside location is subject to 21 no. conditions. These will protect the visual and environmental amenities of the area.
- The appeal does not contain sufficient grounds to overturn the decision to grant the licence.
- The pole was erected on the 25<sup>th</sup> September 2021, following the granting of licence no. CRM230007 on July 23<sup>rd</sup> 2021. Preparatory works were carried out between 12<sup>th</sup> and 26<sup>th</sup> July 2021 under Road Opening Licence 2021DR0150.
- The pole is located on a green embankment of trees alongside two pedestrian paths, abutting the roadway. Section 2 of the Public Roads Act 1993 definition of a road includes pavement or footway. The pole is therefore in line with the s254 licencing to be on, under, over or along a public road.
- The conditional licence states that the position of the pole must have a minimum footpath clearance of 1.8m.
- The Planning and Development Act 2000, as amended does not require the Local Authority to have a freehold interest in the land on which the pole sits. The Property Management Section of Dun Laoghaire Rathdown County Council confirmed to the applicant that the land is maintained by the Parks dept.
- Licences are envisioned as utility development under the Broadband Directive, under which there is no requirement for public notification.
- The use of s254 to install telecoms infrastructure is relatively new. Public notification is not a requirement of the Act or guidelines. The legislation allows third-party voices to be heard up to five years.
- The applicants followed the procedure in the Act. The applicant is available to members of the community seeking information. Sufficient safeguards are in place to protect the rights of the individual.
- Class 31(b) of the Regulations allows a statutory undertaker to install a 12m high pole on private land as exempted development. Under section 254(7) of the Act, installing communications infrastructure under licence issued by the Local Authority is exempted development.



- Section 2.4.2 of the 1996 Telecommunication Guidelines suggests that the height of design of a pole in residential areas will be dictated by the requirements of the operator. The subject application requires a 15m high pole to resolve a coverage blackspot. The Local Authority having considered the case, deemed it exempted development. as detailed in Class 31(b) height restrictions are not applicable.
- Copy of Road Opening Licence

## 6.0 Assessment

- 6.1.1. The subject site being located on land zoned residential is subject to policy Objective EI20 and section 12.9.8 of the Dun Laoghaire Rathdown County Development Plan. The policy requires proposals to comply with the Planning Guidelines for ‘Telecommunications Antennae and Support Structures’ (1996), and Circular Letter PL 08/12 issued by the Department of the Environment and Local Government. It requires the applicant to submit a map the location of all existing telecommunications structures within a 1km radius of the proposed site, giving reason why sharing facilities has not been utilised, a description of the impact of the proposed development on the on the amenities of occupiers of nearby properties, or the amenities of the area, any impacts on rights-of-way and walking routes and that the proposal shall not have a significant negative visual impact.
- 6.1.2. Section 4.3 of the Guidelines refers to ‘Visual Impact’. It states: “... in city suburbs operators should endeavour to locate in industrial estates or in industrially zoned lands ... Only as a last resort ... should free-standing masts be located in a residential area or beside schools. If such a location should become necessary, sites already developed for utilities should be considered and masts and antennae should be designed and adapted for the specific location.”
- 6.1.3. The applicant submitted map no DN\_1151-100 showing 5 no. existing facilities within 1km of the subject site. The applicants report states that none of the existing facilities “would resolve the coverage / capacity issues currently experienced” and that a requirement exists to locate a structure in the centre of the blackspot area. With the exception of one of the existing masts which is stated to be incapable of upgrading, the applicant does not explain why the other masts cannot be used. That a blackspot exists, does not constitute a “last resort”. I am not satisfied that the applicant has demonstrated the case for siting the pole directly adjoining a residential dwelling.

- 6.1.4. In terms of the impact of the proposed development on the surrounds, the applicant states that the pole will be visible but is capable of blending into the surrounding streetscape. The applicants report states that the pole is consistent with the type of utility development commonly founds at the junction of a busy roadway and so will not present as overly dominant.
- 6.1.5. The subject pole is situ. It adjoins two existing utility boxes and a series of ESB poles and wires. It is considerably taller than all of the adjoining structures and is visible from the entire road and both junctions north and south. The existing trees along the green area provide no screening. The height, colour and scale of the mast are a stark contrast to the softer more established residential nature of the surrounding area. I do agree with the applicants assessment of the visual impact as "slight". It is considered that the subject development constitutes a prominent feature in this residential area.

## 6.2. **Legislative Context**

- 6.2.1. The appellant submits that subject pole is not located on a public road and therefore s254 is not the appropriate mechanism under which to erect such a utility.
- 6.2.2. 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.
- 6.2.3. The definition of 'public road' is covered under Section 2 of the Planning & Development Act, 2000 (as amended). This 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;’

6.2.4. The applicant submits that the subject pole and cabinet are on the footpath are therefore within the definition of a road. I do not agree. The subject development has created an area of hardstanding on the grass verge, adjacent to the footpath. The development clearly erodes into the green space. The applicant in their response to the appeal, acknowledge that the development “steps back from the pavement”. The Board will note that Dun Laoghaire Rathdown confirmed that they do not hold the freehold interest in the subject lands but that the Parks Department maintain the lands.

6.2.5. While the location for the proposed development is an area of open space, it does not form part of the footpath, pavement, footway, kerb or any other feature of the road or footpath. I am not satisfied that the siting of the infrastructure meets with the

provisions of section 254 of the Planning and Development Act because it would not be located on a public road.

### **6.3. Appropriate Assessment**

- 6.3.1. Given the nature and scale of the development proposed, which is for a telecommunications support structure and ancillary works, and separation distance from the nearest Natura 2000 site, it is considered that the proposal would not be likely to have a significant effect individually or in combination with other plans and projects on a European site and there is no requirement for a Stage 2 Appropriate Assessment.

## **7.0 Recommendation**

- 7.1.1. I recommend that the licence be refused for the following reasons:

## **8.0 Reasons and Considerations**

- 1 Having regard to the proposed siting of the telecommunications infrastructure on public open space and not on, over or along a public road in accordance with the requirements of section 254 of the Planning and Development Act 2000, as amended, it is considered that it would be inappropriate for the Board to consider the granting of a licence for the proposed development in such circumstances
- 2 The site of the proposed development is located on public open space adjoining established residential development within a suburban area. In accordance with the "Telecommunications Antennae and Support Structures - Guidelines for Planning Authorities", published by the Department of the Environment and Local Government in July, 1996, it is a requirement, with regard to visual impact, that in city suburbs operators should endeavour to locate telecommunications infrastructure in industrial estates or in industrially zoned lands and that only as a last resort should free-standing masts be located in a residential area (Section 4.3). It is considered that the proposed development would constitute a visually obtrusive development in the immediate vicinity of established housing, it would have an adverse visual impact on adjoining residential properties, and would, therefore, conflict with the locational requirements of the Guidelines. The

proposed development would, thereby, be contrary to the proper planning and sustainable development of the area.

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Gillian Kane  
Senior Planning Inspector

23 August 2022