



An
Bord
Pleanála

Inspector's Report

ABP-311942-21

Development	Section 254 Streetpole solution for broadband coverage blackspots.
Location	Public footpath along R149, Newtown, Leixlip. Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	S254L/000681
Applicant(s)	Cignal Infrastructure Ltd.
Type of Application	Section 254 Licence
Planning Authority Decision	Refuse Licence
Type of Appeal	First
Appellant(s)	Cignal Infrastructure Ltd.
Observer(s)	None.
Date of Site Inspection	8 th February 2022
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The appeal site is on the western side of the R419 Regional Road (Captain's Hill) near the entrance to Leixlip (Confey) Train Station. It is roughly 1.2km north of Leixlip town centre.
- 1.2. The site comprises a small area within a gravel asphalt strip that is adjacent a public footpath running parallel to the public road. The footpath terminates at the entrance to the train station and another footpath then continues northwards on the opposite side of the road.
- 1.3. The site is adjoined to the west by a random rubble wall, which is the boundary of River Forest housing estate, the north by a vehicular and pedestrian entrance to the train station, the east by the public road, Captain's Hill, and the south by an existing motor servicing and repairs business. There is a large public open space area further to the east and the character of the area is mainly residential housing and transport related.
- 1.4. There is an existing utility box (cabinet), lamp standard, litter bin and traffic light pole situated between the site and junction of where the Captain's Hill meets the access road to the train station.
- 1.5. The site is owned by Kildare County Council.

2.0 Proposed Development

- 2.1. The Applicant is seeking approval for a Section 254 Licence, comprising an 18m high freestanding telecommunications monopole together with antenna, internal cabling, dish, and ancillary cabinet and operating works.
- 2.2. The monopole would be approximately 0.4m at its widest point and all cables would be housed internally. The purpose of the proposed infrastructure is to provide improved, high quality network coverage for the surrounding area.
- 2.3. It is intended that the proposed development would replace an existing facility in St. Mary's Park, Leixlip, Co. Kildare.

3.0 Planning Authority Decision

3.1. Decision

3.2. The Planning Authority refused the licence on 7th October 2021 for the following reasons:

- The siting of the proposed monopole and associated cabinet at a point where the width of the roadway is already restricted would create an obstruction to vulnerable road users potentially pushing them onto the vehicular carriageway, thereby, endangering public safety by reason of a traffic hazard.
- The Leixlip Municipal District Office do not support the erection of a cabinet and steel pole in this location as a future footpath / cycle track may be carried out here to improve access to the nearby train station, the crossing of the railway, and of the canal to the north. Accordingly, the proposal would prejudice the orderly delivery of safe cycle infrastructure at a point where the width of the available roadway is restricted.

3.3. Planning Authority Reports

3.4. Planning Report

- No Planner's Report.
- Email was issued on 7th October 2021 recommending refusal of the licence for the reasons cited above (see Section 3.2).

3.5. Other Technical Reports

- The Leixlip Municipal District Office issued an internal email on 22nd September 2021 recommending refusal of the licence for the reasons cited above.

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

- 3.6.1. 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').
- 3.6.2. 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.
- 3.6.3. Section 4.3 of the Guidelines refers to visual impact and states that only as a last resort, and if the alternatives are either unavailable or unsuitable, should free-standing masts be located in a residential area. 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. The proposed structure should be kept to the minimum height consistent with effective operation and should be monopole (or poles) rather than a latticed tripod or square structure.
- 3.6.4. The Guidelines also state that some masts will remain quite noticeable despite best precautions. 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.
- 3.6.5. Section 4.6 of the Guidelines ('Health and Safety Aspects') states that it is unlikely that accessing the site will give rise to traffic hazards as maintenance visits should not be more than quarterly. During the construction period, depending on the location of the site, special precautions may have to be taken in relation to traffic.

3.7. Circular Letter PL07/12

Circular Letter PL07/12 revised elements of the 1996 Guidelines under Section 2.2 to 2.7. 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.

3.8. Circular Letter PL11/2020

3.8.1. Circular Letter PL11/2020 'Telecommunications Services – Planning Exemptions and Section 254 Licences' was issued in December 2020.

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.
- It should be particularly noted that 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.

3.9. Leixlip Local Area Plan 2020-2023

- 3.9.1. The site is subject to zoning objective 'B – Existing / Infill Residential' under the 'Leixlip Local Area Plan 2020-2023' (LAP). Utility structures are 'open for consideration' under this zoning.
- 3.9.2. Policy I4 – Energy and Communications: I4 states that it is Council policy to promote and facilitate the development and renewal of energy and communications networks in Leixlip, while protecting the amenities of the town.
- 3.9.3. Objective I4.2 seeks to support and facilitate the provision of telecommunications infrastructure in Leixlip, subject to safety and amenity requirements.
- 3.9.4. Objective I4.4 seeks to discourage a proliferation of above ground utility boxes in the town and to seek screening measures in conjunction with the provision of such structures.

3.10. Kildare County Development Plan 2017-2023

- 3.10.1. Section 8.13 of the *Kildare County Development Plan 2017-2023* ('Development Plan') sets out policy regarding telecommunications infrastructure. It refers to government policy, including the 1996 Guidelines and Circular Letter PL07/12, and states that freestanding masts should be avoided in the immediate surrounds of small towns and villages.
- 3.10.2. Policy TL 1 supports new telecommunications infrastructure.
- 3.10.3. TL 2 states that when evaluating applications for the provision of such installations the Council will seek to ensure that only as a last resort will masts be permitted within or in the immediate surrounds of smaller towns or villages, in a residential area or near a school, hospital or residential care home. The support structure for such facilities should be kept to the minimum height, but consistent with effective operation, and be a monopole or poles rather than a latticed tripod or square structure.
- 3.10.4. TL 4 states that the Council will co-operate with telecommunication service providers in the development of the service, having regard to proper planning and sustainable development

- 3.10.5. TL 5 states that it is policy to have regard to the provisions of the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (1996) and circular letter PL07/12 and to such other publications and material as may be relevant during the period of the Plan
- 3.10.6. TL 6 requires a balance to be struck between facilitating the provision of telecommunications infrastructure in the interests of social and economic progress and sustaining residential amenity and environmental quality.
- 3.10.7. TL 7 seeks to ensure that the location of telecommunications structures minimises and/or mitigates any adverse impacts on communities, public rights of way and the built or natural environment.
- 3.10.8. TL 8 seeks to minimise the number of masts by facilitating such development in a clustered manner.

3.11. Natural Heritage Designations

No designations apply to the subject site.

The nearest European site is the Rye Water Valley / Carton SAC (Site Code: 001398), at a remove of approximately 500m to the southwest.

4.0 The Appeal

4.1. Grounds of Appeal

The main grounds of appeal can be summarised as follows:

- The proposed development is located on a wide section of public footpath that is owned by Kildare County Council.
- The development is required to improve network coverage in the area, which is currently lacking and deficient.
- The future footpath / cycle track works reference by the Planning Authority are not guaranteed to take place.
- Requested details of the proposed footpath and cycle path improvements from the Local Authority. The Council's response indicates that the proposed

improvement works are in the early design stages and, as such, there is no set timetable for implementation.

- All other alternative locations / options for the proposed development have been exhausted.
- The proposed development would not endanger public safety by reason of being a traffic hazard as there is adequate space to accommodate the proposed development within the existing utilities strip. The presence of the monopole and cabinet would not push road users onto the vehicular carriageway.
- The delay in implementing the proposed infrastructure is against Policies TL 2 and TL 4 of the Development Plan.

4.2. Planning Authority Response

- None received.

5.0 Assessment

The main planning considerations relevant to this appeal case are:

- Impact on vulnerable road users
- Delivery of future cycle infrastructure
- Appropriate Assessment

5.1. Impact on vulnerable road users

- 5.1.1. The Planning Authority's first reason for refusal is that proposed monopole and cabinet would create an obstruction to vulnerable road users, thereby, endangering public safety by reason of being a traffic hazard. Particularly, there is a concern that the physical presence of the proposed equipment would force vulnerable road users out onto the public road.
- 5.1.2. The proposed development would be situated on a gravel strip that runs between the public footpath (east) and boundary wall (west). There are other nearby utilities that sit within the strip including an existing cabinet, lamp standard, and litter bin. The

proposed monopole and cabinet would be roughly 8m south of the existing cabinet and setback approximately 0.1m from the boundary wall to the west.

- 5.1.3. The dimensions of the proposed monopole and cabinet are such that it would not encroach onto the public footpath and there would appear to be at least 0.5m of clearance space between the cabinet and edge of path. The Applicant notes that when the equipment is being serviced, the cabinet doors would open and swing over the path by a small distance (approx. 148mm), but that this would still leave adequate clear space for passers-by. It is envisaged that servicing and maintenance would be seldom and happen a few times a year only.
- 5.1.4. In summary, given the proposed location and physical dimensions of the proposed development, I consider that it would allow for sufficient clearance space for pedestrians, and other users, and that it would not endanger public safety by reason of being a traffic hazard.

5.2. Delivery of future road improvements

- 5.2.1. The Planning Authority's second reason for refusal is that the proposed monopole and cabinet would impede the delivery of future planned cycle infrastructure at a point where the width of the available roadway is restricted.
- 5.2.2. I have reviewed the information on file and note that there appears to be limited details in relation to the future planned upgrade of the road in this location. There is email correspondence confirming that there are ongoing discussions taking place in relation to the DART West project and potential related works to Cope Bridge. The Council's Transportation Section has also expressed a preference to avoid any additional utilities in the area that could restrict options around widening the bridge, footpath, and cycle lane in this location.
- 5.2.3. I note that the Applicant states in their appeal that they requested details from the Council in relation to the specific nature of the proposed works and a likely timeframe for their delivery, but that such details could not be shared by the Planning Authority given they are at an early stage.
- 5.2.4. There is no information to suggest that a programme for the implementation of such works has been completed and there is no detailed design works publicly available that I am aware of. There is no specific reference in the LAP or County

Development Plan in the form of a specific roads' objective, cycleway objective, or any other such similar type of designation that indicates future planned improvements are underway for this section of road and / or footpath. It is also unclear if funding has been applied for, or secured, for the anticipated road improvements. Having regard to this, I consider that the future planned road improvements are at an early stage and that the timeframe for their delivery is effectively undefined and vague.

- 5.2.5. I do not doubt that the Council has genuine intentions of upgrading this part of the R419 in the future. The delivery of such works would likely significantly improve the existing road and pedestrian network, be beneficial for the surrounding environment, and make this stretch of road safer and more comfortable for users, particularly for pedestrians and cyclists.
- 5.2.6. However, I note that there is a clear and demonstrable need for the delivery of network improvements in both mobile and broadband coverage in this area. This is evidenced in the documentation submitted with the application, and supported by the online ComReg mapping system, where it is shown there is a drop off in the quality of network signal for the subject service provider ('Three'). I note that national and local planning policy seeks to support and encourage new telecommunications infrastructure in such circumstances.
- 5.2.7. I note also that the legislation allows for the licence to be retracted by the Council 'where in the opinion of the planning authority by reason of the increase or alteration of traffic on the road or of the widening of the road or of any improvement of or relating to the road, the appliance, apparatus or structure causes an obstruction or becomes dangerous, the authority may by notice in writing withdraw the licence and require the licensee to remove the appliance, apparatus or structure at his or her own expense'. This option is available to the Planning Authority and could readily be invoked when the future planned road improvements progress to a more advanced stage.
- 5.2.8. The Applicant has sought a five-year licence as set out in the Application for Licence Form. 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. I consider the

subject development an exceptional circumstance, but that a three-year licence is reasonable on the basis there are future planned road improvements for the area. I consider that such a period should be sufficient to allow all parties to review the matter as and when the projected road upgrades evolve over time.

- 5.2.9. In relation to the site's context and receiving environment, I consider the site to be location to be acceptable. Having regard to the documentation submitted with the application, I do not consider that the proposed monopole, cabinet, or ancillary works would have any undue adverse visual or residential impact on any surrounding land uses in the area.
- 5.2.10. I acknowledge the proposed structure would be more visible than some of the existing structures in the area, including trees and lamp standards. However, I consider that the development would not be so visually impactful that it would seriously injure the visual and residential amenity of the receiving environment.
- 5.2.11. The proposed telecoms equipment would take up a relatively small footprint and I note that the 1996 Guidelines state that some masts will remain quite noticeable, despite best precautions. There would be limited views of the proposed development due to the presence of several significant trees that are situated north and south of the site along the roadside, and that there is a relatively tall boundary wall immediately west of the site. I note also that the road rises upwards to the north, where it meets Cope Bridge, and that this would impede many views from this direction.
- 5.2.12. The Applicant examined several alternative sites from which to locate the proposed development. However, these were ultimately discounted due to being either unavailable or unsuitable. Therefore, having reviewed the information contained within the application, appeal submission, and given the deficit in network coverage for the area, I am satisfied that alternative sites had been duly considered by the Applicant, that the proposal is justified in this location.

5.3. **Appropriate Assessment**

Given the nature and scale of the development proposed, which is for a telecommunications support structure, equipment cabinet, and ancillary works, and the 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.

6.0 Recommendation

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

7.0 Reasons and Considerations

Having regard to section 254 of the Planning & Development Act, 2000 (as amended), the provisions of the *Kildare County Development Plan 2017-2023*, particularly Section 8.13 'Telecommunications Infrastructure', and the *Leixlip Local Area Plan 2020-2023*, including Policies TL1 and TL 4, and the 'Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (1996) (as updated by Circular Letters PL 07/12 and PL11/2020, respectively); it is considered that subject to compliance with the conditions set out below, the proposed development would not endanger public safety by reason of traffic hazard, be visually intrusive or seriously injurious to the visual or residential amenity of the area or of properties in the vicinity, and would be in accordance with the proper planning and sustainable development of the area.

8.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application 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.</p> <p>Reason: In the interest of clarity.</p>
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2.	<p>The license shall be valid for three years from the date of this order. The telecommunications structure and related ancillary structures including any access arrangements shall then be removed and the site lands shall be reinstated on removal of the telecommunications structure and ancillary structures unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.</p> <p>Reason: To enable the impact of the development to be re-assessed, having regard to changes in technology and design during the specified period.</p>
3.	<p>Details of the proposed colour scheme for the telecommunications structure, ancillary structures and fencing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of the visual amenities of the area.</p>
4.	<p>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.</p> <p>Reason: In the interest of public safety.</p>

Ian Boyle
 Planning Inspector

23rd March 2022