



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312052-21

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<b>Development</b>	S254 licence for telecommunications infrastructure
<b>Location</b>	Yellow Walls Road, Malahide, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	S254/02/21
<b>Applicant(s)</b>	Cignal Infrastructure Ltd.
<b>Type of Application</b>	Section 254 Licence
<b>Planning Authority Decision</b>	Refuse Licence
<b>Type of Appeal</b>	First
<b>Appellant(s)</b>	Cignal Infrastructure Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	1 <sup>st</sup> March 2022
<b>Inspector</b>	Ian Boyle

## 1.0 Site Location and Description

- 1.1. The site comprises a section of public footpath near the junction of where Yellow Walls Road meets Ard na Mara, in Malahide, Co. Dublin. Ard na Mara is an established residential street / housing estate.
- 1.2. There is an existing supermarket ('Londis Plus'), pharmacy and bike rental shop to the west of the appeal site and a strip of surface car parking to the south. Further car parking in the form of a dedicated customer car park to the southeast.
- 1.3. The area directly northwest of the site, which is on the northern side of the supermarket building, is hardstand concrete. During the morning of my site visit there was a takeaway coffee truck with outdoor seating and delivery vehicles dropping off to the supermarket using the space. There is a bus stop and pedestrian crossing point with traffic signals on Yellow Walls Road adjacent north.
- 1.4. There is some soft landscaping in front of the supermarket and on the surrounding street network in the form of planted trees and grass verges. Concrete bollards prevent vehicles from parking on the raised pavement in front of the commercial retail units and on the footpath across the street to the southeast. There is a pedestrian footpath and small green area with shrubs and large mature trees on the street corner directly to the east.
- 1.5. The wider surrounding area is mainly characterised by detached, semi-detached and terrace housing.

## 2.0 Proposed Development

- 2.1. The Applicant is seeking approval for a Section 254 Licence comprising a 15m high freestanding galvanised telecommunications monopole, together with an antenna, internal cabling, dish, and ancillary cabinet and operating works.
- 2.2. The monopole would be 0.4m at its thickest point, which is at the top, where the antenna is housed. The dish would be 300mm in diameter and affixed to the monopole at a height of approximately 9.5m.
- 2.3. The purpose of the proposed infrastructure is to provide improved, high quality network coverage for the surrounding area.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority refused the Section 254 Licence for one reason, which was, having regard to the nature and height of the proposed communication infrastructure and its proximity to residential properties at a busy road junction, it is considered that the proposed mast would result in an unacceptable visual impact, be contrary to the Fingal County Development Plan 2017-2023, in particular Objectives IT07 and IT08, and be contrary to the proper planning and sustainable development of the area.

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

### **3.3. Planning Reports**

- The Planner recommended a Refusal for the two reasons set out in the Decision above.
- The proposed development is located on lands zoned as 'LC – Local Centre' where telecommunication structures are permitted in principle.
- The Applicant has indicated in their Application Form that they are applying for a licence to cover the period October 2021 to October 2026 (five years).
- The Applicant has submitted a report that states the proposed development is in accordance with the various supporting policy objectives in the County Development Plan, including Objectives DMS143, DMS144, DMS145.
- 3 no. alternative sites were considered as part of the site selection assessment, including sites in Ard na Mara (residential estate), 'McAllister's Corner' and at the adjoining Londis supermarket. The sites were not suitable as one was on land zoned 'OS – Open Space' and the other two landowners were not interested.
- The proposal would not be in accordance with Development Plan Objectives IT07, which requires best practice in siting and design in relation to erecting communication antennae and IT08, which seeks to keep visual impact to a

minimum with detailed consideration given to the siting and external appearance of the proposed apparatus.

- The proposed monopole has a slim, contemporary design. However, its height at 15m, and resulting physical presence, would be considerably taller than any nearby structure. It would, therefore, be unduly visually obtrusive at this busy junction and negatively affect the visual amenities of the area. The provision of an additional cabinet would also add to the visual clutter of the area.

### 3.4. Other Technical Reports

Transportation Planning Section: No report received.

Parks and Green Infrastructure Division: No report received.

Water Services Department: No objection.

### 3.5. Prescribed Bodies

Irish Water: No objection. However, the Applicant should be cognisant of a 225mm known foul water sewer underneath the footpath.

## 4.0 Planning History

None.

## 5.0 Policy Context

### 5.1. Planning Authorities on Telecommunications Antennae and Support Structures issued (1996)

- 5.1.1. 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 are 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.

- 5.1.2. 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.
- 5.1.3. The Guidelines also state that visual impact is among the more important considerations which should be considered in arriving at a decision for a particular application. In most cases, the Applicant will only have limited flexibility as regards selecting a location given the constraints arising from radio planning parameters, etc. Visual impact will, by definition, vary with the general context of the proposed development.
- 5.1.4. 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.
- 5.1.5. The Guidelines state that some masts will remain quite noticeable despite best precautions. For example, local factors must 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.

## 5.2. **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.

## 5.3. **Circular Letter PL11/2020**

5.3.1. 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.
- 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.

#### 5.4. Other National Policy

- *Project Ireland 2040 – The National Planning Framework (NPF)*
- *The East and Midlands Regional Spatial Economic Strategy (RSES)*

#### 5.5. Fingal County Development Plan 2017-2023

##### **Zoning**

The appeal site is zoned 'Local Centre' which seeks "to protect, provide for and/or improve local centre facilities'. Telecommunication structures are permitted in principle under the zoning.

The grassy section of land across the street to the south is zoned 'OS - Open Space' and the land in all other directions is zoned 'RS – Residential', which seeks to 'provide for residential development and to protect and improve residential amenity'.

##### **Movement and Infrastructure – Chapter 7**

'Telecommunications Antennae and Support Structures' (Section 7.4)

##### ***Objective IT01***

*Promote and facilitate the sustainable delivery of a high-quality ICT infrastructure network throughout the County taking account of the need to protect the countryside and the urban environment together with seeking to achieve balanced social and economic development.*

##### ***Objective IT05***

*Provide the necessary 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 PL07/12 which shall take precedence, and any subsequent revisions or additional guidelines in this area.*

### **Objective IT07**

*Require best practice in siting and design in relation to the erection of communication antennae.*

### **Objective IT08**

*Secure a high quality of design of masts, towers and antennae and other such infrastructure in the interests of visual amenity and the protection of sensitive landscapes, subject to radio and engineering parameters.*

### **Development Management Standards**

#### **DMS143**

*Require the co-location of antennae on existing support structures and where this is not feasible require documentary evidence as to the non-availability of this option in proposals for new structures.*

#### **DMS144**

*Encourage the location of telecommunications based services at appropriate locations within the County, subject to environmental considerations and avoid the location of structures in fragile landscapes, in nature conservation areas, in highly sensitive landscapes and where views are to be preserved.*

#### **DMS145**

*Require the following information with respect to telecommunications structures at application stage:*

- *Demonstrate compliance with Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities issued by the Department of the Environment in July 1996 and / or to any subsequent amendments, Code of Practice on Sharing of Radio Sites issued by the Commission for Communications Regulation and to such other publications and material as maybe relevant in the circumstances.*
- *Demonstrate the significance of the proposed development as part of a national telecommunications network.*



- *Indicate on a map the location of all existing telecommunications structures (whether operated by the applicant or a competing company) within a 1km radius of the proposed site.*
- *Where sharing is not proposed, submit documentary evidence clearly stating the reasons why it is not feasible to share existing facilities bearing in mind the Code of Practice on Sharing of Radio Sites issued by the Commission for Communications Regulation.*
- *Demonstrate to what degree there is an impact on public safety, landscape, vistas and ecology.*
- *Identify any mitigation measure.*

## 5.6. Natural Heritage Designations

There are no designated European sites within the vicinity of the site.

The nearest European Sites are the Malahide Estuary SAC (Site Code: 000205) and Malahide Estuary SPA (Site Code: 004025), which are approximately 400m to the northwest.

## 6.0 The Appeal

### 6.1. 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 Fingal County Council.
- The development is required to improve network coverage in the area.
- The Applicant has completed a 'Street Works Site Justification Form. The proposed location was selected as it is within the applicable search ring, there is adequate space to accommodate the proposed monopole and cabinet and it avoid interfering with existing services or the public footpath, the development would blend in with the existing environment, and there is fibre available in the area to ensure connectivity to the network.

- A number of alternative locations were looked at by the Applicant, including Ard na Mara (residential estate) to the southwest, 'McAllister's Corner' to the south and the adjoining Londis supermarket. The Applicant states that the Council requested that an application for Ard na Mara be withdrawn and the other two landowners were not interested in accommodating a telecoms proposal.
- The Applicant's appeal includes a series of maps demonstrating the existing and predicted coverage range. Figure 4 sets out the 'Existing Indoor Coverage' that is currently provided. Figure 5 'Proposed Indoor Coverage' shows the difference in coverage levels, which would result if the proposed Licence is granted.
- The Applicant states that a substantial improvement in network coverage would result on foot of the proposed telecoms mast being erected. The comparison improvement is shown in blue in Figure 6 and it is anticipated that the existing problems of missed calls, poor quality of service and patchy indoor service currently experienced in the area would be improved on foot of the proposed development.
- Section 3.2.5. of the Appeal includes a list of 6 no. alternative existing Comreg sites within 2km of the subject site which accommodate existing telecommunications infrastructure. The Applicant states that none of these sites were suitable to accommodate the proposed development as each site is outside the required search ring, meaning there would be no coverage benefits arising by adding equipment in any of these locations.
- The Applicant references various supporting policy objective from the County Development Plan, including Objectives IT07, IT08, DMS143, DMS144, DMS145, and national and regional policy documents.
- There are no protected scenic routes or amenity designations that apply to the site. The site does not adjoin or is close to any Protected Structures, ACAs or European Sites (such as an SPA or SAC). There is a Local Objective under the Development Plan for a future Indicative Cycle / Pedestrian Route along Yellow Walls Road. However, this would not be

impacted upon by the development proposed, which would be setback approximately 8.5m.

- The proposed development is a modern streamlined version of the required equipment, which was rolled out when the Section 254 Licence process was introduced.
- The Visual Impact Assessment (VIA) includes 8 no. Visual Reference Points (VRPs) within a 152m radius of the appeal site, including 6 no. along Yellow Walls Road and 2 no. from Ard na Mara.
- The VIA demonstrates that there would be no detriment to the visual amenities of the surrounding area. The established backdrop of development and street lighting would also help to absorb the proposed development from the various viewpoints where the proposed development would be visible.
- The Applicant refers to a previous appeal case involving Galway City Council in 2020 where the Board's Inspector referenced the proposed telecoms mast as having a 'nondescript character and design that is not dissimilar to a lamp standard or traffic light pole'. The proposed development was recommended to be granted by the Inspector and ultimately permitted by the Board (ABP Ref. PL.61.306440).

## 6.2. Planning Authority Response

- The telecommunication pole would not be suitable for what is an essentially a residential area.
- It is requested that the Board uphold the Decision of the Planning Authority to refuse permission for the subject licence.

## 7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Visual Impact and Residential Amenity
- Site Selection (Alternatives Considered and Technical Justification)

- Appropriate Assessment

## 7.1. Visual Impact and Residential Amenity

- 7.1.1. The Planning Authority's reason for refusal is due to the proximity of the proposed development to residential properties, at a busy road junction, and that it would have an unacceptable visual impact on the surrounding area.
- 7.1.2. Objective IT07 requires best practice in siting and design in relation to erecting communication antennae. Objective IT08 seeks to keep visual impact to a minimum and requires that detailed consideration be given to the siting and external appearance of the proposed equipment.
- 7.1.3. I acknowledge that the proposed telecommunications facility may cause some potential impact on the local environment by virtue of its height and potential for visual intrusion. Sites such as this, located close to existing residential housing, are accepted as being particularly sensitive from a visual and residential amenity perspective, as referenced in Section 4.3 in the 1996 Guidelines.
- 7.1.4. The Applicant has submitted a Visual Impact Assessment to aid the visual assessment of the development proposal. The assessment comprises 8 no. viewpoints from various locations that are nearby and further afield, including 6 no. viewpoints along Yellow Walls Road to the east and west and 2 no. viewpoints from Ard na Mara, to the south, which are both residentially zoned areas. Having physically visited the site and completed a visual inspection up close and from the surrounding vicinity I consider the photomontages to be an accurate depiction of how the proposed development would appear as if it were built.
- 7.1.5. Whilst I acknowledge the proposed structure would be more visible than some of the existing structures in the area, including overhead powerlines, lamp standards and signage, I consider that it would not be so visually disruptive to the degree that it would seriously injure the visual and residential amenity of the receiving environment. The proposed development would take up a relatively small footprint and many of the views towards it would be impeded by existing, mature trees and the supermarket building. This is particularly the case for longer views from the south from Ard na Mara (No. 7), and from the west along Yellow Walls Road (Nos. 1

and 2). In most other cases, I note that only the top of the pole would be visible (Nos. 4, 5 and 6).

- 7.1.6. The full extent of the proposed development, including both the mast and cabinet, would be mainly only visible for closeup views (Nos. 3 and 6), which would not be unexpected and I note that the 1996 Guidelines state that some masts will remain quite noticeable despite best precautions. The proposed monopole adopts a slender appearance and, in my opinion, the Applicant has sought to minimise its potential for visual impact by selecting a monopole of low to medium height. The proposed monopole is 15m tall.
- 7.1.7. From inspecting the drawings submitted as part of the original application, it would appear the monopole structure would be painted in a grey muted colour, which is typical of telecommunications infrastructure seeking to assimilate with the typical sky colour in Ireland. However, to ensure that the proposed colour scheme is appropriate, I would recommend that a suitable condition be included on any Grant of Permission that issues.
- 7.1.8. Planning Circular PL07/12 recommends that Development Plans should avoid including any policies that have minimum separation distances between telecommunication installations, schools, and residential dwellings. The nearest school is approximately 400m to the north, which is Pope John Paul II NS. The nearest church is the Catholic Church of the Sacred Heart, Malahide, which is roughly 900m to the northwest. The road network between the appeal site, and school and church, is meandering and there are several housing estates along the route. Therefore, any visual impact upon these receptors would be negligible, in my opinion, given the physical disparity and pattern of existing development in the area. I note also that there are no sensitive environmental, conservation or scenic view objectives or designations that apply to the site.
- 7.1.9. In summary, I do not consider that the proposed development would present as overly dominant, or be an overbearing feature, in this setting and that the Applicant has employed appropriate mitigation measures to reduce any such impact from arising. Therefore, I consider the proposal to be acceptable from a visual impact and residential amenity perspective and that it is in accordance with the provisions of the County Development Plan, including Objectives IT01, IT05, IT07 and IT08.

## 7.2. Site Selection (Alternatives Considered and Technical Justification)

- 7.2.1. The Development Plan seeks to facilitate the provision of telecommunication masts, antennae, underground infrastructure and ancillary equipment, subject to normal planning considerations having regard to the DoEHLG publication *'Telecommunications Antennae and Support Structures - Guidelines for Planning Authorities' (1996)*.
- 7.2.2. I have consulted the Comreg Outdoor Coverage Map for network coverage for the area. Eir's 3G coverage for the appeal site varies between 'good' and 'fair', which means that there is a mix of strong signals and marginal data transfer with drop-outs at weaker signal levels. The 4G Outdoor Coverage Map shows that there is a larger prevalence of 'fair' coverage only. This means that most of the immediate vicinity around the appeal site, and also towards the east in particular, has sporadic access only to fast and reliable data speeds and marginal data transfer with drop-outs is possible. It is also clear that other parts of Malahide have better service coverage, which ranges between 'very good' and 'good'.
- 7.2.3. The *Telecommunication Guidelines and Planning Circular PL07/12* encourages co-locating antennae on existing support structures and requires documentary evidence of the non-availability of this option for proposals for new structures. It also states that the shared use of existing structures will be required where there is an excessive concentration of masts in a single area.
- 7.2.4. Telecommunication facilities are encouraged to primarily locate within existing industrial estates, or industrially zoned land, in the vicinity of larger suburban areas or towns, insofar as this is possible. There are no industrial estates in the vicinity of the appeal site, or the surrounding area, however. There is also a general absence of other taller structures in the vicinity, which could potentially be used to accommodate the new, proposed development. I note that neither 'McAllister's Corner' or the adjoining Londis supermarket were options available to the Applicant, despite their efforts, as the landowners did not wish to accommodate the proposed development.
- 7.2.5. It is further noted that there is a general absence of existing tall buildings in the area. Alternative existing Comreg sites within 2km of the appeal site are too far removed and lie outside the required search ring area. Therefore, it is not possible for the

Applicant to co-locate on an existing telecommunications structure whilst also providing the required improvements in coverage provision.

7.2.6. Having reviewed the information contained within the application, appeal submission and the existing coverage information that is available on the ComReg website, I am satisfied that alternative sites had been considered by the Applicant, that the proposal is justified, and that it would help to improve the existing 3G and 4G service coverage for the area.

7.2.7. I consider that the Applicant has provided a detailed technical justification showing that there are service deficiencies in the area, which would be resolved by the proposed development. The proposal is consistent with Objectives DMS143 and DMS145 of the Development Plan, and the 1996 Guidelines, which require co-location of antennae on existing support structures, but that where this is not feasible to submit evidence of the non-availability of this option. The Applicant has submitted sufficient justification detailing the non-availability of alternative site options, in my view, and is consistent with the requirements of national guidance.

### **7.3. Appropriate Assessment**

Given the nature and scale of the development proposed, which is for a telecommunications monopole 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.

### **8.0 Recommendation**

I recommend that a licence 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 the section 254 of the Planning & Development Act, 2000 (as amended), the Fingal County Development Plan 2017-2023,

particularly Objectives IT01, IT07, DMS145; 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 seriously injure the amenities of the area or result in a significant negative residential or visual impact on the surrounding vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 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><b>Reason:</b> In the interest of clarity.</p>
2.	<p>a) This licence shall apply for a period of five 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.</p> <p>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.</p>



	<p><b>Reason:</b> 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><b>Reason:</b> 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><b>Reason:</b> In the interest of public safety.</p>

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Ian Boyle  
 Planning Inspector

2<sup>nd</sup> March 2022