



An  
Bord  
Pleanála

## Inspector's Report ABP 312610-22

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<b>Development</b>	Place and maintain telecommunications cabinet and pole.
<b>Location</b>	R825, Lower Kilmacud Road, Dublin 14.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	CRM 166629
<b>Applicant</b>	Signal Infrastructure Limited
<b>Type of Application</b>	Section 254 Licence
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	3rd Party v. Grant
<b>Appellant</b>	Sarah Dunleavy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	15 <sup>th</sup> June 2022
<b>Inspector</b>	Stephen Ward

## **1.0 Introduction**

- 1.1. This case concerns an appeal against the decision of Dun Laoghaire-Rathdown County Council to grant a licence to place a telecommunications cabinet and pole on the public footpath/roadway in accordance with Section 254 of the Planning and Development Act 2000 (as amended). It is one of four appeals made against the decision of the planning authority. Separate case files have been established for each appeal and this case should be read in conjunction with the three other appeals (ABP Ref. 312083-21, ABP Ref. 312733-22, ABP Ref. 312737-22). The structures are now in place and it would appear that the appeals were initiated subsequent to the commencement of works.

## **2.0 Site Location and Description**

- 2.1. The site is located on the southern side of Lower Kilmacud Road, east of its junction with Dale Drive. It is distanced c. 300 metres west of the Kilmacud-Stillorgan neighbourhood centre. The site is annexed from a grass verge that runs between the road edge and the footpath. It is rectangular in shape and measures approximately 4m x 2m.
- 2.2. The Lower Kilmacud Road is a busy route which connects the Drummartin Road to the N11 National Primary road. There are several bus stops on the road which serve the No. 11 route from Sandyford to Glasnevin. There are also several utility/lighting poles on both sides of the road. The surrounding area is largely dominated by residential development consisting of single storey and 2-storey semi-detached housing.

## **3.0 Proposed Development**

- 3.1. The development involves a 15m-high telecommunications support pole on the site. The pole has a width of 324mm and a grey galvanised finish. The top of the pole supports 3 no. antennae (3.7m-high and 406mm wide) shrouded by a sheath to match the pole. Fixtures at the lower level include a GPS dome and a 300mm dish (to be included only if no fibre infrastructure in the area). At ground level there is an

operator's cabinet with an overall height of c. 1.7 metres. Underground connections are also included to the nearest fibre and power ducts.

3.2. The application outlines that the area has been identified as a blackspot for mobile and wireless broadband and that the proposal will address this coverage deficit. It is accompanied by a 'Site Assessment' and 'Planning Report', both prepared by CMC Planning Consultants. It also contains:

- confirmation from the Commission for Communications Regulation that the applicant is authorised to provide an electronic communications network / service.
- a Radio Emissions Statement from *eir*.

## 4.0 Planning Authority Decision

### 4.1. Decision

4.1.1. On the 9<sup>th</sup> of July 2021, Dun Laoghaire Rathdown County Council made a decision to grant the licence subject to 21 conditions. Condition no. 2 limits the duration of the licence to 5 years.

### 4.2. Planning Authority Reports

#### Planning Reports

4.2.1. The assessment of the proposal can be summarised as follows:

- The land is not zoned but adjoins zoning objective 'A'. Given the scale of the proposal and the nature of the area, there would be no serious adverse impacts on the visual or residential amenities of the area.
- The proposal would not be contrary to any specific policy or objective in the Development Plan or Local Area Plans. Development Plan Policy EI 28 supports such infrastructure subject to balanced impacts on the environment, residential amenity, and visual amenity.
- The proposals would not impact on any recorded monument, protected structure, right of way, or scenic route.

- Lands in the vicinity do not appear overly cluttered in relation to existing appliances etc. on the public road.
- Appropriate Assessment or Environmental Impact Assessment is not required.
- There is no objection to the issuing of the licence.

#### Other Technical Reports

- 4.2.2. Parks Section: Trenching for electrical connection should take place in the road to avoid damage to the Cherry tree outside no. 70 Kilmacud Road Lower.

Traffic Section: An undated report from 'DLR Traffic' includes a table of 'Signal Mast Applications S254'. It states that there is 'no objection' to the proposed location at Kilmacud Road Lower. A further report is dated 22<sup>nd</sup> November 2021, which is after the making of the planning authority decision. It objects to the proposal on the basis that it would hinder sight lines and the operation of the road network and the nearby junction, where drivers from Dale Drive would have their sight blocked.

#### 4.3. **Prescribed Bodies**

None

#### 5.0 **Planning History**

Apart from the other concurrent appeals, I am not aware of any previous applications on the site and the planning authority has not referenced any such cases.

#### 6.0 **Policy Context**

##### 6.1. **Development Plan**

- 6.1.1. Since the lodgement of the application with the planning authority and its decision to grant the licence, the Dun Laoghaire Rathdown County Development Plan 2022-2028 was adopted. It came into force on the 21<sup>st</sup> April 2022.
- 6.1.2. In accordance with the common approach to the public road/footpath, the subject site is not zoned for any particular objective. The surrounding residential properties

are zoned as 'Objective A', which is '*To provide residential development and improve residential amenity while protecting the existing residential amenities*'.

6.1.3. Section 10.6 of the Plan deals with Telecommunications and includes the following policy objective:

EI20: Telecommunications Infrastructure

To promote and facilitate the provision of an appropriate telecommunications infrastructure, including broadband, fibre optic connectivity and other technologies, within the County.

6.1.4. Chapter 12 sets out the Development Management Requirements and Section 12.9.8 provides guidance on Telecommunications. 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.

## 6.2. National Policy

- 6.2.1. The National Planning Framework (NPF) acknowledges that telecommunications networks play a crucial role in enabling social and economic activity. National Policy Objective 24 aims to 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. National Strategic Outcome 5 also recognises the importance of digital and data innovation in maintaining a strong economy supported by enterprise, innovation and skills.
- 6.2.2. The Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996), hereafter referred to as the Telecommunications Guidelines, set out the criteria for the assessment of telecommunications structures. The Guidelines were updated by Circular Letters PL07/12 in 2012 and PL 11/2020 in 2020.

## 6.3. Natural Heritage Designations

None in the vicinity.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

The appeal by Sarah Dunleavy (127 Lower Kilmacud Road) can be summarised as follows:

- The height of the pole exceeds the 12-metre limit for exempted development as per SI 31/2018 and the Planning and Development Regulations.
- There is a requirement for notification to stakeholders by way of paper drop. This did not occur, and local residents were excluded from the consultation process. This is unacceptable due to:
  - Proximity to dwellings (including the appellant's), schools and a busy road/junction
  - Health and safety concerns and industry standards

- Road safety hazards, for pedestrians, cyclists, and vehicles
- The visual dominance of the structure in the area and from Mount Merrion and significant adverse effects on amenity.
- The justification for the tower is challenged on the following grounds:
  - Coverage requirements should not necessitate a 15m-high pole
  - If the ultimate intention is 5G coverage, then health risks must be satisfied
  - Alternative sites have not been adequately addressed.
- The applicant's visual impact assessment is incorrect, and the view of the pole cannot be avoided from the appellant's house.
- No site survey was undertaken and desktop survey contains many inaccuracies, which is unprofessional and unsatisfactory.
- There are current legal challenges to similar proposals in South Dublin County Council.
- Cork City Council refused to grant a licence to the applicant for 5 similar sites in residential locations.

## 7.2. Applicant Response

The applicant did not respond to this appeal. However, it should be noted that the applicant did respond to the other three appeals involving similar grounds.

## 7.3. Planning Authority Response

The planning authority did not respond to this appeal.

## 7.4. Observations

None.

## 8.0 Assessment

### 8.1 Introduction

8.1.1. Having regard to the documentation submitted in connection with the application and the appeal, relevant local and national policy, and having inspected the site, I consider that the main issues for assessment are as follows:

- The principle of the development
- Visual Impact
- Traffic

### 8.2 The principle of the development

8.2.1. The proposal aims to address a coverage deficiency for mobile and wireless broadband at this location. This is clearly supported by national and local planning policies which seek to improve telecommunications infrastructure in the interests of improved connectivity and social and economic development. I am also satisfied that the Development Plan and the Telecommunications Guidelines set out an appropriate policy framework and criteria to assess such proposals.

8.2.2. The application addresses the need and justification for the development, including details of alternative locations and mast-sharing options. It outlines the site selection criteria and the deficiencies that exist in the area, as well as the absence of other existing telecommunications structures within reasonable proximity of the site. It includes a map showing the existing structures, concluding that there are none within 500m and no suitable structures within 1km. The applicant's response to other appeals includes additional information confirming the extent of the coverage blackspot and the improved coverage associated with the subject infrastructure. In this regard I would accept that the *eir* website coverage details are indicative only and that the information submitted is a more detailed assessment of the impact.

8.2.3. I note that the Telecommunications Guidelines encourage the co-location of antennae on existing support structures and masts. They acknowledge that sites will be chosen in the interests of good quality coverage taking into account topography, population, and other criteria, and accept that in some instances may not be technically possible to share facilities. I have reviewed the ComReg Site Viewer,



which shows the location of existing masts in the area, and I note that the current provision is consistent with that of the applicant's report of October 2019. I would also accept that some of the closest of the existing sites are already accommodating the subject operator (i.e. *eir / Meteor*) and are evidently not adequate to serve the target area.

- 8.2.4. In addition to existing telecommunications structures, the Telecommunications Guidelines advise other recommended options, including other tall buildings, utility sites, and industrial/commercial/retail areas. However, I would acknowledge that the target area is a low-rise residential area and there are no utility sites or significant industrial/commercial/retails areas within c. 400m of the subject site. Accordingly, I consider that the applicant's motivation for the construction of a new structure at this location is reasonable.
- 8.2.5. The Telecommunications Guidelines states that only as a last resort should masts be located in a residential area or beside schools. If such a location should become necessary, it states that masts and antennae should be designed and adapted for the specific location. The structure should be kept to the minimum height consistent with effective operation and should be monopole rather than a latticed tripod or square structure. I am satisfied that the structure has been designed in accordance with these principles.
- 8.2.6. As previously outlined, the subject site is not zoned in the Development Plan for any particular objective, and I do not consider that there are any policies or objectives which would restrict the subject development. I am also satisfied that the application contains adequate information to assess the proposal in accordance with the criteria outlined in section 12.9.8. of the Development Plan.
- 8.2.7. Having regard to the above, I conclude that the application has demonstrated a need and justification for the development, both in terms of coverage requirements and the absence of suitable alternative sites. I acknowledge the location of the site within a residential area and the proximity of schools in the wider area. However, I am satisfied that this is a 'last resort' option, and this is not precluded by the Telecommunications Guidelines or the Development Plan. Therefore, I consider that the principle of the development is acceptable and consistent with relevant local and national policy.

### 8.3 Visual Impact

- 8.3.1. The design of the development comprises a single, monopole structure with a diameter of 0.324 metres and an overall height of 15 metres. It supports shrouded antennae at the top of the structure with a slightly increased width of .406m. The design also contains minimal additional fixtures, and a small cabinet structure has been installed at ground level.
- 8.3.2. I note that the applicant's response to other appeals includes the conclusions of an in-situ survey and a 'Line of Sight' assessment from properties in the surrounding area. I note the conclusions of these assessments and confirm that I have not verified the sightlines from each viewpoint. However, I have carried out a site inspection of general views from the surrounding area and properties (including the appellant's property at 127 Lower Kilmacud Road). Furthermore, I would highlight that visibility alone is not the determining factor, but rather the extent of the visual impact and its effect in the context of the wider area and surrounding properties.
- 8.3.3. Having inspected the site, I acknowledge that the structure is larger and more visible than some of the existing utility structures/apparatus in the area. However, I consider that it is not so visually disruptive to the degree that it seriously injures the visual or residential amenities of the receiving environment, including those associated with the appellant's property. The development takes up a relatively small footprint and many of the views towards it are impeded by existing buildings, vegetation, and utility poles/wires. The full extent of the development, including both the mast and cabinet, is mainly only visible in localised, proximate views.
- 8.3.4. In terms of the number and location of other such structures on the public road, I consider that the development is generally consistent with the established density/spacing of utility poles and lighting columns. Therefore, it does not result in an excessive proliferation of such structures or detract from the amenities of the area for this reason.
- 8.3.5. I note the proximity of the closest dwelling to the south of the site, at a distance of c. 15m. This dwelling does not face towards the structure, nor do any of the dwellings to the east. Two semi-detached dwellings to the southwest face towards the structure at a considerable distance of c. 50 metres, while the opposing dwellings to the north (including the appellant's) are distanced by c. 25 metres (c. 15 metres to

the boundary wall) on the opposite side of a busy road. Having regard to the limited height and width of the subject pole, the orientation of surrounding dwellings and their setback from the site, and the extent of existing vegetation and utility wires/poles at this location, I do not consider that the subject structure forms an obtrusive or overbearing structure to such an extent that it seriously detracts from the residential amenity of surrounding dwellings.

8.3.6. The subject site is not located within proximity to any recorded monuments, views to be preserved, protected structures, architectural conservation areas, or any other features of built heritage or landscape sensitivity.

8.3.7. In conclusion, I submit that in the context of the existing environment, the visual impact of the structure is not unduly intrusive in terms of the character or visual amenity of the area, or the residential amenity of surrounding properties. Therefore, I consider the proposal to be acceptable from a visual impact and residential amenity perspective, that it is in accordance with the provisions of the County Development Plan, and that the structure has been designed in accordance with the requirements of the Telecommunications Guidelines for residential areas.

#### 8.4. **Traffic**

8.4.1. The subject structure is sited within a grass verge between the public road and the footpath. Therefore, I am satisfied that it does not impact on any rights of way or walking routes.

8.4.2. The appeal raises concerns about traffic and pedestrian safety, and I acknowledge that a DLRCC Traffic Section report objects to the proposal on the basis traffic safety on the road network and adjoining junction. This report was prepared on the 22<sup>nd</sup> November 2021, long after the DLRCC decision and before the receipt of any appeals. Nonetheless, the concerns raised are noted, as is the applicant's response to other appeals including details of the available sightlines at the adjoining Dale Drive junction.

8.4.3. The site is located within the built-up area where the 50km/h speed limit applies, while a 30km/k speed limit applies to the adjoining Dale Drive. As previously outlined, the pole is of limited width and is setback c. 1m from the road edge. It is accepted that the ground cabinet forms a bulkier presence. Overall however, I

consider that the development is generally consistent with this and other suburban areas which typically include a range of trees, poles, and other apparatus along the road edge.

- 8.4.4. Having inspected the site, I do not consider that the structures interfere with the movement of pedestrians or vehicular traffic on the adjoining road. The structures are c. 27 metres from the centre line of Dale Drive at its junction with Lower Kilmacud Road. I consider that the structures provide only limited obstruction to visibility and sightlines at this junction, which is not untypical of a suburban environment where traffic speeds are limited.
- 8.4.5. Having regard to the above, I conclude that the development does not seriously detract from the convenience and safety of road users including pedestrians. Accordingly, I have no objections in this regard.

## 8.5. **Other Issues**

### Health and safety

- 8.5.1. The appeal raises concerns about the potential health implications of the development. I note that the applicant has included a Radio Emissions Statement outlining that the development will operate in accordance with the requirements of the Communications Regulator and based on guidance from the International Council for Non-Ionising Radiation Protection.
- 8.5.2. Ultimately however, the Telecommunications Guidelines and Circular Letter PL-07-12 outline that applications should not be determined on health grounds. Health and safety is regulated by other codes and such matters should not additionally be regulated by the planning process. Accordingly, the Board need not concern itself with any potential health and safety implications of the development.

### Licence Duration

- 8.5.3. I note that Circular PL 07/12 states that the attachment of conditions to permissions for telecommunication masts and antennae which limit their life to a set temporary period should cease. However, given that this appeal relates to a Section 254 licence application for development on public land, it is considered reasonable that the licence be granted for a specified duration as provided for under Section 254 (4)

of the Planning and Development Act, 2000 (as amended). This will enable the Planning Authority to re-assess the suitability of proposed development at the end of the appropriate period in light of any changed circumstances pertaining at that time. I note that the Board specified a period of 3 years in comparable appeal cases (e.g. ABP-307354-20, ABP 307196-20 ABP 308857-20, ABP 312095-21, ABP 312622-22). I consider such a condition to be appropriate.

#### Exempted Development

- 8.5.4. Consistent with Circular Letter PL 11/2020, I am satisfied that the development can be considered under section 254 of the Planning and Development Act 2000 (as amended), and that s. 254(7) of the Act confirms that development carried out in accordance with a licence under this section shall be exempted development for the purposes of this Act.

#### 5G Coverage

- 8.5.5. Regarding the appeal concerns regarding the use of the structure for 5G coverage, the applicant has clearly outlined that the structure is for 3G and 4G use, both in the application and the applicant's response to the appeal. I am satisfied that the terms of any licence would limit the structure to the details of the plans and particular submitted and that the question of 5G coverage would also be regulated by other codes, i.e. the Commission for Communications Regulation. Accordingly, the Board need not concern itself with this matter.

#### Public notification

- 8.5.6. The application has been made under section 254 of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 20001 (as amended). I am satisfied that this legislation contains no requirements for public notification for such applications and that any local authority requirements for 'paper drops' or other notification is not prescribed in legislation. It is clear that any notification by the applicant was done as a voluntary exercise. Accordingly, I have no objections in this regard.

#### Precedence

- 8.5.7. While I note the alleged precedent cases cited in the appeal, I consider that all cases should be assessed and determined on their own merits having regard to the

characteristics of the receiving environment and the specifics of the proposed development. Accordingly, I do not consider that there are grounds to refuse the development on the basis of precedence.

#### Survey information

- 8.5.8. The appeal contends that proper site surveys were not completed and that the survey information submitted is inaccurate. I am satisfied that the application and appeal documentation contain sufficient information to enable the Board to make a determination on the case. I have carried out a site inspection and I consider that there are no grounds to refuse the development on the basis of inadequate or inaccurate information.

### **9.0 Appropriate Assessment - Screening**

Having regard to the nature and limited scale of the development, its location within a built-up, serviced area and the separation distance from any Natura 2000 site, no appropriate assessment issues arise, and it is not considered that the development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

### **10.0 Environmental Impact Assessment – Screening**

The development is not of a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). Accordingly, I am satisfied that EIA or EIA screening is not required in this case.

### **11.0 Recommendation**

In view of the foregoing, I recommend that the Board grants the licence subject to conditions, for the reasons and considerations set out below.

## 12.0 Reasons and Considerations

Having regard to the nature, scale and design of the development, which is a 15m high freestanding monopole carrying telecommunications equipment with ancillary ground-mounted infrastructure, the provisions of section 254 of the Planning & Development Act, 2000 (as amended), the Dun Laoghaire Rathdown County Development Plan, 2022-2028, and the 'Telecommunications Antennae and Support Structures - Guidelines for Planning Authorities' issued by the Department of the Environment and Local Government in July, 1996 as updated by Circular Letters PL 07/12 issued by the Department of the Environment, Community, and Local Government in 2012 and PL 11/2020 issued by the Department of Housing, Local Government and Heritage in 2020; it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the visual or residential amenities of the area or the amenities of property in the vicinity of the site, and would be acceptable in terms of the convenience and safety of road users including pedestrians. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 13.0 Conditions

1. 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 within three months of the date of this order and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. This licence shall be valid for a period of three years from the date of this order. The telecommunications structure and related ancillary structures shall then be removed and the lands shall be reinstated on removal of the

telecommunications structure and ancillary structures unless, prior to the end of the period, continuance shall have been granted for their retention for a further period. Details relating the removal and reinstatement shall be submitted to, and agreed with, the planning authority at least one month before the date of expiry of this licence.

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

3. No advertisement or advertisement structure shall be erected or displayed on the structure or within the curtilage of the site without a prior grant of planning permission.

**Reason:** In the interest of the visual amenities of the area.

4. The structure shall not interfere with existing services and drainage systems and shall not obstruct pedestrian access.

**Reason:** In the interests of orderly development and pedestrian safety.

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

**Reason:** In the interest of public safety.

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Stephen Ward  
Senior Planning Inspector

15<sup>th</sup> June, 2022