



An
Bord
Pleanála

Inspector's Report ABP 313239-22

Development	Alterations to existing Glasmore-Malahide-Swords 38kV line.
Location	Park Avenue, Streamstown, Malahide, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F22A/0028
Applicant	Electricity Supply Board
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. Refusal
Appellant	Electricity Supply Board
Observer	Maurice & Ailish Gleeson
Date of Site Inspection	03/05/23
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The lands over which the existing 38kV overhead power line traverses are located to the south and west of Streamstown Lane and west of the R107 – Dublin Road. Save for some infrastructural/service works the lands are undeveloped but are subject of an extant permission for 47 no. dwellings. Park Avenue with access from Streamstown Road is within and runs parallel to the eastern site boundary. It is a cul de sac currently providing vehicular access to a small enclave of large, detached houses further south. The western side of the road has a footpath and grass verge. The eastern side is delineated by a grass verge. A wooden pole set carrying overhead wires is located within this grass verge. The northern section of the site (over which the overhead line crosses) is bounded by a detached dwelling within mature landscaped grounds to the east. The shared boundary is delineated by mature trees and shrubs.

2.0 Proposed Development

The proposal entails:

- Undergrounding of approx. 500 metres of the Glasmole-Malahide-Swords 38kV overhead line between structures 19 and 22. 3 no. existing wooden pole sets and associated overhead wires will be removed.
- 15 metre high line to cable termination mast on lands at Park Avenue.

The purpose of the works is to underground the ESB overhead line to allow lands owned by Streamstown Connect Trading DAC to be developed for residential purposes.

The application is accompanied by:

- Cover letter
- Supporting Submission on behalf of Streamview Connect Trading DAC
- Appropriate Assessment Screening Report
- Arboricultural Report

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for two reasons which can be summarised as follows:

1. The proposal would present an intrusive and incongruous feature, would be seriously injurious to the visual amenities of the area and would unduly impact on existing and future residential amenities.
2. Failure to provide a comprehensive plan demonstrating long term proposals for the undergrounding of the remaining lines to the east results in an ad-hoc proposal and would fail to contribute towards the achievement of the RA - residential zoning objective and vision of the development plan. The proposal would set an undesirable precedent.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer's report in the Record of Executive Business and Chief Executive's Order can be summarised as follows:

- The site layout plan is not sufficient to appropriately determine whether or not encroachment onto 3rd party lands would occur however it is apparent that hedging which traverses the boundary would be removed. Section 34(13) of the Planning and Development Act 2000, as amended, noted.
- The required mast would be in close proximity to both the road and existing and permitted dwellings.
- The previous reasons for refusal have not been adequately overcome.
- No detail has been provided demonstrating exclusion zones around the overhead power line to support the view that its presence would effectively sterilise the lands. Objective DMS 142 of the (previous) Development Plan is noted which sets out no specific clearance required in respect of a 38kV line.

- Both from existing and proposed undergrounding of the line, together with the detailed planning history in of the area, it is evident that development will be likely to occur on lands to the east.
- The application provides an opportunity for consideration of the comprehensive undergrounding of the line. The proposal is ad-hoc. ESB are acting contrary to its own Line Alteration Policy which states that piecemeal undergrounding in areas undergoing development can lead to safety issues and wasted effort and the option for undergrounding the entire length of the line should be considered.
- The tower's visual intrusion into the streetscape would have a detrimental impact on existing and future residential amenities with no comprehensive plan led approach for the decommissioning of such a structure.
- It is not accepted that the structure is relatively discreet and would not be dominant.
- The planning authority is committed to the appropriate application of the relevant objectives of the development plan as they relate to the provision of energy, however this will not be at the expense of the visual amenity of the newly forming residential area.
- Should the development be permitted in the proposed form and upon completion of the residential development on lands to the west, the intrusive nature of this mast would compound the piecemeal nature of the development rather than the comprehensive forward planning of the undergrounding of the line by the statutory undertaker.

A refusal for 2 no. reasons recommended.

3.2.2. Other Technical Reports

Water Services Department has no objection.

Parks and Green Infrastructure Division recommends a condition requiring the recommendations of the tree report be implemented.

Transportation Planning Section does not support the location of the mast as it would impede/prevent the future upgrade of pedestrian infrastructure on the east side of

Park Avenue. The land is zoned residential and is likely to be developed in the future. Its location in the existing road verge would constitute a traffic hazard. Further information seeking its relocation recommended.

3.3. **Prescribed Bodies**

DAA has no comment.

Irish Water has no objection subject to condition.

3.4. **Third Party Observations**

An observation on the proposal received by the planning authority is on file for the Board's information. The issues raised are comparable to the observation received and summarised in section 6.4 below.

4.0 **Planning History**

F20A/0622 – permission refused 12/07/21 for the same development for similar reasons (2no.) to those cited in the current case.

F22A/0380 – permission granted 13/09/22 to amend condition no. 5 attached to F21A/0547 to allow for required works as per F19A/0446, to be delivered before the occupation of residential units as permitted under F21A/0547.

F21A/0547 – permission granted 13/01/22 for 50 no. dwellings. Condition 2 required the omission of 3 no. units resulting in 47 no. units total.

F19A/0446 – permission granted 28/08/20 for upgrade of the existing road over a distance of c.120 metres.

ABP 307020-20 (F19A/0452) – permission refused on appeal for 57 no. dwellings on grounds of unacceptably low density and substandard form and layout.

F18A/0168 planning permission granted in May 2019 for alterations to development permitted under PA Ref. F13A/0443 (ABP Ref. PL06F.243435). The proposed alterations primarily included increase in site area from 2.44 ha to 2.57 ha and increase in no. of residential units from 22 to 32.

PL06F.243435 (F13A/0443) permission granted in October 2014 for construction of 24 no. detached residential units to form Phase 2 of the partially completed residential development permitted under PA Ref. F06A/1576.

5.0 Policy Context

5.1. Development Plan

Since the lodgement of the appeal with the Board the Fingal County Development Plan 2023 was adopted and came into effect on 5th April 2023.

The lands underneath the western length of the route to be undergrounded is zoned Green Belt. The eastern portion of the lands on which there is an extant permission for 47 dwellings are zoned RS residential, the objective for which is to provide for residential development and protect and improve residential amenity. The observer's lands and those immediately adjoining are zoned RA residential, the objective for which is to provide for new communities subject to the provision of the necessary social and physical infrastructure.

Chapter 11 addresses Infrastructure and Utilities

Objective IUO45 – Undergrounding of Utility Infrastructure

Require that the location of local utility services such as electricity, telephone and television cables be located underground wherever possible, and to promote the undergrounding of existing overhead cables and associated equipment, where possible, in the interests of visual amenity and improved public realm.

5.2. Natural Heritage Designations

None in the vicinity.

5.3. Environmental Impact Assessment

Class 10, Part 1 Schedule 10 of the Planning and Development Regulations, 2001, refers to the construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres. The proposal for the

undergrounding of 500 metres of a 38kV OHL with a cable termination mast does not come within this class of development and, therefore, EIA is not applicable.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal can be summarised as follows:

General

- ESB are a regulated utility by the Commission for Regulation of Utilities. It is required to divert overhead lines based on Least Cost Technically Acceptable (LCTA). On this basis it cannot divert lines on a speculative basis to facilitate development unless the cost of such diversions is paid for by the developers of such lands. ESB's Line Alteration Policy specifies how undergrounding of overhead lines is managed and charged (summary provided).
- The manner in how a 38kV overhead line (OHL) can be undergrounded is determined by technical criteria. In order to underground an OHL it is necessary to 'break' the existing OHL by inserting a steel line/cable interface mast which is designed to change the circuit from an OHL to an underground cable (UGC) at the point where the UGC is to start, divert the electrical circuit underground and bring the circuit above ground again using another line/cable interface mast. This is standard ESB electrical design. The other potential design solution considered was a triple end pole with attached stays. This design was not feasible due to the fact that the stays would protrude onto Park Avenue, causing safety concerns.
- It is confirmed that the full extent of the mast including underground foundations can be constructed as per the planning drawings.
- ESB is open to engaging with other landowners should they wish to underground the line. ESB does not design and propose underground routes without landowner agreement as this might further restrict development proposals in the area.

- The lattice tower should be viewed at this time as an interim solution with opportunities to remove it in the future.

Reason for Refusal No. 2

- The proposal is not ad-hoc and is an appropriate technical solution at this time.
- There are technical and safety clearances required in respect of a 38kV line notwithstanding the fact that they are not detailed in the Fingal County Development Plan.
- If the overhead line remains in situ it will result in the non-development of a number of dwellings within the Streamstown Connect Trading DAC site. The undergrounding of the OHL will allow development of the site to be maximised.
- Whilst it may be desirable to underground the full length of the OHL it has not been possible to reach agreement with landowners in relation to easements or costs associated with the overhead line (details of correspondence provided).
- As no agreement could be reached with adjacent landowners the only solution which would allow the Streamstown Connect Trading DAC lands to be developed was to solely engage with Streamstown Connect Trading DAC. Having consulted in relation to its design and site layout, the only option was to install a 15m Type 63a cable to line interface mast.

Reason for Refusal No.1

- The undergrounding of the existing overhead wires is a significant visual benefit.
- In view of the 15 Type 63a cable to line interface mast being the only technical solution, ESB has endeavoured to design this mast to minimise its visual appearance.
- The location of the lattice tower benefits from existing trees and shrubbery so it is relatively discrete. While it would be visible it is not dominant. It would

not significantly detract from the visual amenity of the area. It would not present as an intrusive and incongruous feature within the emerging context.

6.2. Planning Authority Response

No further comment.

Should permission be granted a condition applying a financial contribution in accordance with the Council's Section 48 development contribution scheme is recommended.

6.3. Observations

An observation has been received from Maurice & Ailish Gleeson who own the land directly to the east of the proposed ESB mast. The submission can be summarised as follows:

- The mast cannot fit on the narrow grass verge. The distance from the Park Avenue road kerb to the current ESB poles supporting the 38kV cables is 2.69 metres and is far short of the 5.7 metre overground tower footprint requirement. The mast will block most of the road even with protective fencing removed.
- They own the tree line. The developer's new metal fence must be 1 metre west of the tree line. This fence would be the new boundary. This is legally recorded in a signed agreement. This further reduces the grass verge by another metre.
- As the structure must remain on the developer's own land it cannot span the tree line.
- The idea that the tower could remain on the developer's grounds and could also blend into the tree line is not possible.
- They have not agreed to any above ground development on their property.
- They have an agreement with the developer to have a conduit included in the Streamstown Lane widening which can accommodate utilities such as ESB underground cables. There does not appear to be any issue that prevents

ESB using this new conduit all the way from Park Avenue to the Malahide Road in the future.

- They did not agree to 20 metres of the boundary hedgerow being removed. The removal would have an adverse impact on their visual amenities.
- The 2 no. reasons for refusal of the previous application remain valid.
- ESB statutory powers under Section 531 of the Electricity (Supply) Act 1927 do not apply in this application.
- A solution would be to move the proposed tower west to the other side of Park Avenue into the location of one of the dwellings already omitted by way of permission. This option would allow the use of poles with restraining cables. It would be more visually pleasing.

7.0 Assessment

- 7.1. As noted the undergrounding of cables by ESB would normally comprise exempted development having regard to Class 26, Part 1 Schedule 2 of the Planning and Development Regulations, 2001, as amended, however the requirement to install a line cable termination mast in the grass verge on Park Avenue removes this exemption benefit.
- 7.2. As per the supporting statement on behalf of the developer of the lands underneath the line, permission has been secured for 47 dwellings (reduced from 50 no.) under ref. F21A/0547. The reason for the reduction in housing numbers is to enable the undergrounding of the ESB cables subject of this application. Should the wires be removed then permission could be sought for the 3 no. omitted units.
- 7.3. The applicant has advised that the site developer did not engage with it prior to the lodgement of the application and receipt of permission. As a consequence what has transpired is that the retention of the OHL in situ would require the omission of 17 no. dwellings at the north end of the site so as to maintain the required safety/technical separation distances. The undergrounding of the line is therefore required to allow for the development potential of the site to be fulfilled.
- 7.4. The undergrounding of approx. 500 metres of the Glasmole-Malahide-Swords 38kV overhead line between structures 19 and 22 which would result in the removal of 3

no. existing wooden pole sets and associated overhead wires is a positive proposal. The undergrounding will run along Streamstown Road to the north. However in the absence of agreement with landowners to the east, the continuation of the undergrounding of the line is not possible and requires the installation of a 15 metre high line termination lattice mast within the developer's lands. The said mast is to be located in the grass verge alongside Park Avenue at the point where there is an existing wooden pole set carrying the OHL. The road runs along the eastern boundary and abuts the observers' land immediately adjoining. The boundary is delineated by matures trees and hedge. Park Avenue is a cul-de-sac providing access to dwellings to the south. Dwelling units granted permission on the site will also have direct access onto the road.

- 7.5. ESB is a regulated utility by the Commission for Regulation of Utilities. It is required to divert overhead lines based on the Least Cost Technically Acceptable (LCTA) policy. On this basis it cannot divert lines on a speculative basis to facilitate development unless the cost of such diversions is paid for by the developers of such lands. ESB's Line Alteration Policy specifies how undergrounding of overhead lines is managed and charged, details of which are provided in support of the appeal.
- 7.6. Invariably the optimum arrangement would be the avoidance of such a mast and continuation of the undergrounding. However in view of the parameters in which ESB must operate it cannot undertake the works unilaterally and must secure the consent of the respective landowners who would benefit from same and recoup the costs arising. ESB provides details in support of the application and appeal that such agreement has not been secured with the owners/developers of the lands to the east, some of which have the benefit of permission for residential development including the extant permission for 5 no. dwellings in the curtilage of the observers' dwelling under ref. F19A/0541 and that for 13 no. units further east under ref. F17A/0573. On this basis I consider that the applicant has provided sufficient information to support its assertions that best efforts were made to secure the undergrounding of the line eastwards. As noted previously it is constrained by the parameters in which it must operate. On this basis I would not accept that the applicant has sought to advance a piecemeal development and would not concur with the planning authority's criticisms in this regard.

- 7.7. ESB is the relevant authority in terms of determining the clearance requirements from overhead power lines and the absence of any reference to same in a county development plan does not override these requirements. As noted previously the overhead line traverses the northern section of the site immediately overhead house nos. 8 to 24 in the approved layout under permission ref. F21A/0547 and thereby would impact on their delivery should the OHL not be undergrounded.
- 7.8. I submit that the substantive issue arises with regard to the proposed line cable termination mast and its location on the grass verge alongside Park Avenue at the location of an existing double wooden pole. Whilst I note the observers' recommendation to relocate the mast to the west side of Park Avenue in the location of House No.28 with the potential to use a triple end, 6 no. stay wire installation, I reiterate the point that, as providers, ESB is the relevant authority to determine the technical requirements including the type of line termination mast and its location. The applicant advises that the mast location and mast type 63a is the only viable option other than to leave the OHL in situ. A triple end pole 6 no. stay wire installation would require a greater land take.
- 7.9. From the details on file and the details provided on the previous application made under ref. F20A/0622 ESB designers are cognisant of residential amenities and, when undertaking diversions/undergrounding, will attempt to site line cable interface masts out of residential estates wherever possible. It failed to secure the consent of the adjoining landowner (observers to this appeal) to place two legs of the mast on their lands. It advises that its statutory powers under the section 531 of the Electricity Supply Act 1917 do not apply where OHLs are being diverted solely for residential purposes. As a consequence the mast is required to be placed entirely within the site subject of the residential development.
- 7.10. Little detail is provided in support of the application in terms of the mast footprint with images of comparable masts provided. As per the details given in the description of the proposed project in the AA Screening Report accompanying the application the base footprint over ground for the tower is 5.7 sqm. with the sub foundation base being 8.58 sq.m.
- 7.11. The observers contend that the existing grass verge is insufficient to allow for the location of the mast measuring in the region of 2.69 metres in width. They also

contend that the developer's new metal fence must be 1 metre west of the tree line and that this would be the new boundary with a signed agreement attesting to this fact. This would reduce the grass verge by another metre.

- 7.12. As extrapolated from drawing no.210215-P-10 accompanying the application the red line delineating the site boundary extends beyond the centre of the hedge line which will be required to be removed for a distance of 10 metres to either side of the mast to allow for the required clearance, a total of 20 metres. The verge would be in the region of 5 metres wide at the proposed location. In its appeal the applicant confirms that the full extent of the mast including underground foundations can be constructed. As to how this is the case is unclear based on the specifications provided however I acknowledge that the applicant is the relevant authority in the determination of the appropriate technical solutions and required land take.
- 7.13. Whilst I acknowledge the observers' contention that their consent for the removal of the hedgerow or encroachment onto their lands has not been given and would not be forthcoming and the apparent inability of the applicant to invoke the statutory powers available to it in such circumstances, I consider that any further dispute in terms of land take and legal title is a matter more appropriately addressed via the appropriate legal channels. The applicant should be advised of section 34(13) of the Planning and Development Act, 2000, as amended, that a person is not entitled solely by reason of a permission to carry out any development.
- 7.14. Certainly the site is not optimum, immediately adjacent to the cul-de-sac Park Avenue and immediately opposite dwellings as permitted under ref. F21A/0547. Unquestionably it will be visible and I would concur with the observers that the visual aids presented by the applicant in support of the application do not realistically portray the actual visual extent. However I consider this to be the compromise so as to allow for the development of the overall lands in a more sustainable manner facilitated by the undergrounding of the OHL. Such a juxtaposition within an urban context, whilst not ideal, is not uncommon. On this basis I would concur with the applicant that the visual impact is not of such a scale as to warrant a refusal of permission. The mast is an interim solution with the potential for its removal in the future should consent be secured from adjoining landowners with the advancement of the surrounding lands' development. The planning authority could consider the appropriateness of requiring such works in its decisions on future applications.

7.15. Taking into consideration the extent of Park Avenue, a cul de sac with a footpath on one side, the 50 kph speed limit and the existing and permitted residential development to be served by same, I do not consider that the proposed mast could constitute a traffic hazard or give rise to public safety issues.

Note: The Fingal County Council Development Contribution 2021 is not applicable to this development.

Appropriate Assessment

7.16. Having regard to the nature and extent of the proposed development on a fully serviced and zoned lands and the distance to the nearest European Sites, it is concluded no appropriate assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

Having regard to the foregoing and the provisions of the current Fingal County Development Plan 2023 against which the proposed development is appropriately assessed, I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the nature and extent of the proposed development comprising of the undergrounding of a 38kV overhead power line so as to allow for the efficient development of residentially zoned lands, to the location of the 15 metre high line to cable termination mast which is required to facilitate the undergrounding and to the pattern of existing and permitted development in the vicinity, it is considered that the proposed development would not adversely impact on the residential or visual amenities of the area and would not give rise to a traffic hazard. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed plans and particulars.

Reason: In the interest of clarity.

2. The detailed design and layout of the line to cable termination mast on the grass verge beside Park Avenue, including appropriately scaled elevation drawings and a fully dimensioned site layout plan to a scale of not less than 1:200, shall be submitted for the written agreement of the planning authority prior to commencement of development.

Reason: In the interest of clarity.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Pauline Fitzpatrick
Senior Planning Inspector

May, 2023