



An
Bord
Pleanála

Inspector's Report

ABP-313415-22

Development	Section 254 Licence to install free-standing street pole, equipment cabinet and associated site works
Location	Public footpath on the east side of Church Road and near the junction with the Old Navan Road, Mulhuddart, Dublin 15
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	S254W/07/21
Applicant(s)	Cignal Infrastructure Ltd.
Type of Application	Section 254 Licence
Planning Authority Decision	Refuse Licence
Type of Appeal	First Party
Appellant(s)	Cignal Infrastructure Ltd.
Observer(s)	None
Date of Site Inspection	18 th January 2023
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The appeal site is on the eastern side of Church Road, on the northern side of the N3 (Navan Road), in Mulhuddart, Dublin 15. Church Road crosses over the Tolka Valley Park (public park) in this location via the Mulhuddart Bridge and travels in a north - south direction, generally. The appeal site is roughly 30m south of where the bridge begins.
- 1.2. The section of footpath comprising the site is relatively wide and there are other tall utilities in the vicinity including lamp standards, traffic lights, public lighting fixtures and road signage. There is a tall CCTV fixture near the intersection of where Church Road meets the Navan Road, roughly 40m to the south.
- 1.3. There is existing open space and parkland to the east and west which comprises the Tolka Valley Park. Mature trees are widespread in the surrounding vicinity, particularly to the east. There is a network of pedestrian footpaths connecting the park to the surrounding suburban areas.
- 1.4. The character of the area is mainly residential and commercial.
- 1.5. The site is owned by Fingal County Council.

2.0 Proposed Development

- 2.1. The Applicant is seeking approval for a Section 254 Licence, comprising an 15m high freestanding telecommunications monopole together with antenna, internal cabling, dish and ancillary ground-level cabinet and operating works.
- 2.2. The monopole would be approximately 0.4m at its widest point and cables housed internally.
- 2.3. The purpose of the proposed infrastructure is to provide improved, high quality network coverage for the surrounding area to address mobile and broadband blackspots.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority refused the Section 254 licence for one reason, which was that having regard to the nature and height of the proposed communication infrastructure and ancillary cabinet on the public footpath, the proximity to the Tolka Valley Park (which is zoned High Amenity) and the site being within a Highly Sensitive Landscape, it was considered that the streetpole would damage the visual amenity of the area, be contrary to the objectives of the Fingal Development Plan 2017 – 2023 in respect of telecommunications antennae and therefore contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

The report of the Planning Officer (dated 25th March 2022) informed the decision of the Planning Authority and raised the following main issues:

- The proposed streetpole that would provide a significant a benefit to the area through improved mobile and wireless broadband addressing an identified blackspot. However, this must be balanced against its significant impact on the visual amenity within a highly sensitive landscape.
- The subject site is not on zoned lands. The closest lands are zoned 'HA – High Amenity', where telecommunication structures are not 'permitted in principle', nor 'not permitted'.
- The proposed design is contemporary in design. However, the 15m height cannot be ignored. The mast would be considerably higher than nearby public lighting and would intrude excessively on the visual environment of the Tolka River.
- The visual impact assessment has not had sufficient regard to the character of the surrounding area.

- The proposed cabinet would need to be accessed for maintenance purposes, which is in proximity to a signalised junction.
- Therefore, having regard to the sensitivity of the surrounding landscape and its High Amenity zoning, it is considered the proposed location of the telecom pole and cabinet would result in significant visual impact and therefore be contrary to Objectives NH35 and DMS144 of the Fingal Development Plan 2017-2023.
- Recommend refusal of licence.

3.2.2. Other Technical Reports

Parks and Green Infrastructure: The subject site is within a highly sensitive landscape on Green Infrastructure Sheet No. 14 and Tolka River Park, which is designated High Amenity. The proposed development would result in significant visual impact. The ground cabinet would reduce the footpath width and potentially limit the implementation of future cycle network objectives. It is recommended that a less sensitive location be sought by the Applicant.

Transportation: It is not clear how much of the footpath width would be left available for use at this location once the cabinet is installed. The proposed development would be less obtrusive if it was set back into the existing wall.

4.0 Policy Context

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

- 4.1.1. 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 is an essential feature of all modern telecommunications networks. In many suburban situations, because of the low rise nature of buildings and structures, a supporting mast or tower is needed.

- 4.1.2. Section 4.3 of the Guidelines refers to visual impact and states that only as a last resort should free-standing masts be located within, or in the immediate surrounds, of smaller towns or villages. If such locations should become necessary, sites already developed for utilities should be considered, and masts and antennae should be designed and adapted for the specific location.
- 4.1.3. The support structure should be kept to the minimum height consistent with effective operation. The Guidelines also state that visual impact is among the more important considerations that should be considered assessing a particular application. In most cases, the Applicant will only have limited flexibility as regards location, given the constraints arising from radio planning parameters, etc. Visual impact will, by definition, vary with the general context of the proposed development.
- 4.1.4. 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.
- 4.1.5. The Guidelines state that some masts will remain quite noticeable despite best precautions. For example, there will be local factors which have to be taken into account in determining the extent to which an object is noticeable or intrusive. This may include intermediate objects (buildings or trees), topography, the scale of the object in the wider landscape, the multiplicity of other objects in the wider panorama, the position of the object with respect to the skyline, weather, lighting conditions, etc. Softening of the visual impact can be achieved through a judicious choice of colour scheme and through the planting of shrubs, trees etc as a screen or backdrop.

4.2. **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.

4.3. **Circular Letter PL11/2020**

4.3.1. 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.

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

- a) the proper planning and sustainable development of the area,
- b) any relevant provisions of the development plan, or a local area plan,
- c) the number and location of existing appliances, apparatuses or structures on, under, over or along the public road, and
- d) the convenience and safety of road users including pedestrians.

4.4. Fingal Development Plan 2017-2023 ('Development Plan')

[Note: At the time of writing, the Draft Fingal Development Plan 2023 - 2029 was due to take effect in April 2023. The relevant provisions of the Draft Plan, including the zoning of the subject site and its immediate surrounds, are effectively the equivalent of the 2017-2023 Development Plan.]

Zoning Map (Sheet No. 13)

The subject site is not zoned. It is within a footpath that runs parallel to a public road.

The lands to the east of the site are zoned 'HA - High Amenity', to the south (across the Navan Road) 'LC - Local Centre', and to the west 'OS Open Space',

High Amenity Zoning

The HA zoning objective is 'to protect and enhance high amenity areas'.

Its zoning vision is 'to protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored'.

Telecommunications structures are not listed as either 'Permitted in Principle' or 'Not Permitted'.

Local Centre Zoning

The LC zoning objective is 'to protect, provide for and/or improve local centre facilities'.

Its zoning vision is *inter alia* 'to provide a mix of local community and commercial facilities for the existing and developing communities of the County...'

Telecommunications structures are listed as 'Permitted in Principle'.

Indicative Cycle / Pedestrian Route

There is a specific objective for an 'Indicative Cycle / Pedestrian Route' on the western side of the Church Road (continuous blue line).

Green Infrastructure Map (Sheet No. 14)

The site is designated as 'Highly Sensitive Landscape: Blanchardstown North'.

The Landscape Character is 'River Valley / Canal'.

Chapter 7 - Movement and Infrastructure

'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.

Chapter 9 - Natural Heritage

Objective NH35

Resist development such as houses, forestry, masts, extractive operations, landfills, caravan parks and large agricultural/horticulture units which would interfere with the character of highly sensitive areas or with a view or prospect of special amenity value, which it is necessary to preserve.

Chapter 12 - 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.*

4.5. **Natural Heritage Designations**

There are no designated European Sites affecting the site or in its vicinity.

5.0 **The Appeal**

5.1. **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 an area where there is currently limited service.
- The Planning Authority has taken the view that despite the site being in an urban area, with established street furniture, including tall features such as streetlights and a CCTV monopole, the proposed development would have a significant visual impact. The site is not within a sensitive area given its urban context.
- The site is not on, or near, the Mulhuddart Bridge. The proposed monopole would seamlessly fit into the receiving urban environment and have no detrimental impact on the Tolka Valley Park.
- The CGI images prepared by Redmond Associates (Consulting Engineers) and Visual Impact Assessment (VIA) shows that whilst the proposed development would be visible in closeup views, which is to be expected, the

visual sighting of the development would not be detrimental to the amenities of the area.

- The specific objective for an 'Indicative Cycle / Pedestrian Route' is the on the western side of the Church Road, on the far side of the road from the subject site. The Council also has the right to request the Applicant to remove any Section 254 development for the purposes of road widening or improvements.
- The proposed cabinet would be setback 2.1m from the edge of the road. The Applicant has no issue with recessing the proposed monopole and cabinet back into the existing wall, which would result in a 3.1m distance from the roadside to avoid it being positioned on the public footpath.
- The Applicant states that a substantial improvement in network coverage would result on foot of the proposed telecoms mast being erected. 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.
- 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).
- A similar reference is made to another 15m monopole permitted by the Board at St. John's Hill, The Folly, Waterford (ABP Ref. LC93.309598).

5.2. Planning Authority Response

- The telecommunication pole would not be suitable in this area, which is within a Highly Sensitive Landscape next to the River Tolka (Tolka Valley Park).

- The VIA does not include any views from the Tolka Valley Park to the east and is not considered to have had sufficient regard of the landscape character of the area.
- The ground cabinet would significantly reduce the footpath width and therefore limit any potential implementation of future cycle network objectives.
- It is requested that the Board uphold the Decision of the Planning Authority to refuse permission for the subject licence.

6.0 Assessment

The main planning considerations relevant to this appeal are:

- Visual Impact
- Delivery of future cycle infrastructure
- Appropriate Assessment

6.1. Visual Impact

- 6.1.1. The Planning Authority's reason for refusal is due to the nature and height of the proposed development in proximity to the Tolka Valley Park (zoned 'HA - High Amenity'), and the site being within a Highly Sensitive Landscape. It is stated that this would damage the visual amenity of the area and therefore is contrary to the objectives of the Fingal Development Plan 2017 - 2023 in respect of telecommunications antennae.
- 6.1.2. Sites such as this, located close to highly sensitive character types, including river valleys and canals, are accepted as being particularly sensitive from a visual amenity perspective as per Section 9.4 'Landscape' of the Development Plan. I note also that although the subject site is not zoned, it is situated close to an area which is zoned 'HA – High Amenity'. The vision for this zoning is 'to protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness, and sense of place...'.

- 6.1.3. However, I also note the physical characteristics of the site and its receiving context, which is highly urbanised and accommodates a significant amount of relatively tall buildings and urban infrastructure, including tall lamp standards, traffic lights, road signage and public lighting fixtures. There is also a tall CCTV fixture near the intersection of where Church Road meets the Navan Road, roughly 40m to the south. I do not consider the receiving environment to be particularly sensitive for this reason and note that the site itself is unzoned, despite its proximity to the lands which are designated 'High Amenity'.
- 6.1.4. 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 1996 Guidelines state that the height of telecoms support structures, when the requirements of the backbone network are taken into account, can range from 12m to 60m, although most typically will be between 20m and 40m. The proposed monopole is 15m.
- 6.1.5. I acknowledge that the proposed telecommunications facility is likely to have some visual impact on the receiving environment by virtue of its height and potential for visual intrusion. I have visited the appeal site and acknowledge that the proposed telecommunications facility would be visually apparent, particularly when viewed closeup and from along Church Road. This is largely due to the 15m height of the proposed monopole, albeit I note that it adopts a modern, sleek and slender appearance, roughly 0.4m at its widest point, and with cables housed internally. In this regard, I consider the proposal to be in accordance with Objective IT08 of the Development Plan, which 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.
- 6.1.6. In my view, the proposed monopole and equipment cabinet would not be so visually impactful that it would seriously injure the visual amenity of its receiving environment. This is evident from viewing the schematic elevation in Drawing No. DU1386-104 and the Visual Impact Assessment (VIA) accompanying the application. The VIA provides a total of 6 no. viewpoints ('Visual Reference Points').
- 6.1.7. I acknowledge the Planning Authority's concerns in that no Visual Reference Points, or viewpoints, of the proposed development were taken from the east side of the

appeal site, which comprises the lands zoned 'High Amenity'. It is not clear why the Applicant decided to omit any such views, but this could be seen as a shortcoming in the application, in my opinion. Notwithstanding this, I have completed a physical inspection of the site and its surrounding area, including from within parkland to the east (High Amenity lands), and do not consider that the proposed development would present as overly dominant or be an overbearing feature in this setting.

- 6.1.8. The visual interface between the subject site and lands to the east is not particularly sensitive, in my view, given the highly urbanised and built-up nature around this part of Church Road and Mulhuddart, generally. Views from within the park towards to the appeal site (facing west) already comprise a series of similar type fixtures (lamp standards etc.) and I do not consider that the addition of a single, slender monopole in this location would undermine the sensitive nature of the wider adjoining lands. The remaining viewpoints and CGIs are from the north, west and south and demonstrate that there would be no unacceptable visual impacts incurred from these locations.
- 6.1.9. In relation to Objective NH35, I do not consider that the proposed development would interfere with the character of this sensitive area or with a view or prospect of special amenity value. Neither the proposed monopole or equipment cabinet would impinge on the character, integrity or distinctiveness of the high amenity area, or its sensitive landscape, and it would not detract from any scenic views or vistas.
- 6.1.10. In summary, I consider that appropriate mitigation measures have been employed as part of the proposal to reduce the potential for unacceptable levels of visual impact arising. I conclude that the proposal is acceptable from a visual amenity perspective and that it is in accordance with the provisions of the Development Plan, including Objectives NH35 and DMS144.

6.2. **Delivery of future cycle infrastructure**

- 6.2.1. The Planning Authority references the potential impact the proposed development would have on the public footpath and that the cabinet would significantly reduce its width. It would, therefore, limit the implementation of future potential cycle network objectives.

- 6.2.2. The Development Plan includes a specific objective for an 'Indicative Cycle / Pedestrian Route' on the western side of the Church Road. This is shown as a continuous blue line. [The same information is shown on the Draft Fingal Development Plan 2023-2029 as a dotted navy line.] The delivery of such works would likely deliver significant existing road and pedestrian network improvements and make this stretch of road safer and more comfortable for users, particularly for pedestrians and cyclists. However, I do not consider that the proposed development would inhibit or constrain the delivery of such works given the subject site is on the opposite side of Church Road and that the appeal site itself is small in area.
- 6.2.3. The dimensions of the proposed monopole and cabinet are such that it would not encroach onto the public footpath to any significant degree and there appears to be at least 3m of clearance space available between the cabinet and edge of road (if the cabinet is recessed back into the wall adjoining the public footpath). It is possible that the cabinet doors would open and swing over the path by a small distance. However, this would still leave adequate clear space for pedestrians. I would envisage that servicing and maintenance of the unit would be seldom, in any case.
- 6.2.4. The Council's Transportation Section has not raised any objection to the proposal. However, they have noted in their report that it is not clear how much of the footpath would be left available for use once the cabinet is installed; and that preferably the cabinet would be setback back into the wall so that it would be less obtrusive, as referenced above. In this regard, I note that the Applicant has stated in their Appeal that they have no issue with this and I would recommend that an appropriate condition be included as part of any Decision to grant the proposed licence.
- 6.2.5. I note also that the legislation allows for the licence to be retracted by Fingal County 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 relied upon where any future planned road or footpath improvements are progressed at a later stage.

- 6.2.6. I acknowledge Section 2.2 of Circular Letter PL 07/12 which 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. In this regard, I consider that a ten-year licence is reasonable on the basis there may be future planned road improvements for the area. I consider such a period sufficient to allow the matter to be reviewed in view of potential upgrades affecting this stretch of Church Road.
- 6.2.7. In summary, given the location, nature and physical design of the proposed development, I conclude that it would not limit the potential implementation of future road improvement works or cycle network upgrades.

6.3. 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.

7.0 Recommendation

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

8.0 Reasons and Considerations

Having regard to the nature, scale and design of the proposed 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 Fingal County Development Plan 2017-2023, 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 visual impact on the surrounding vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 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>
2.	<p>The permitted development shall be positioned and setback into existing wall situated alongside the public footpath such that the footpath remains obstructed for pedestrians and other users.</p> <p>Drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity and pedestrian and traffic safety.</p>
3.	<p>a) This licence shall apply for a period of ten 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,</p>

	<p>the planning authority at least one month before the date of expiry of this licence.</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>
4.	<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>
5.	<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

21st February 2023