



An
Bord
Pleanála

Inspector's Report

ABP-313694-22

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| Development | Telecommunications street works solution. |
| Location | Kilmacud Road Upper, Stillorgan, Co. Dublin |
| Planning Authority | Dun Laoghaire Rathdown County Council |
| Planning Authority Reg. Ref. | CTT.22.033 |
| Applicant(s) | On Tower Ireland Ltd. |
| Type of Application | S254 Licence. |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant(s) | On Tower Ireland Ltd. |
| Observer(s) | None. |
| Date of Site Inspection | 08 th of March 2023. |
| Inspector | Karen Hamilton |

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1.0 Site Location and Description

- 1.1. The site is located along the side of the Kilmacud Road Upper, Stillorgan, Dublin 18. The site is along the side of the public footpath, adjacent to a brick wall associated with a residential estate, Marsham Court. There is a public bus stop and shelter along the road and a small ESB cabinet along a grass verge beside the footpath.
- 1.2. The Kilmacud Road Upper is long and relatively straight and has designated cycle paths in both directions. There are several mature trees, associated with the residential open space, along the western side of the boundary wall.

2.0 Proposed Development

- 2.1. The proposed development would comprise of the installation of telecommunications infrastructure as detailed below:
 - 15m Alpha 3.0 streetpole with a 1 no. Alpha 3.0 Antenna at azimuths TBD°
 - Metal cabin (1.898m wide x 1.652m high x 0.798m deep).

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse the license request on the basis that:

It will result in an overconcentration of telecommunications infrastructure of this type on, under, over or along the public road in the local area, and as such the application is considered to be contrary to the provisions of subsection 254 (5) (c) of the Planning and Development Act 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The PA report noted the proposal would not interfere with existing services or the operation of the footpath.

- Although an increase in height, the telecommunications infrastructure would be broadly in keeping with existing infrastructure.
- There would be no significant negative visual impact on the surrounding residential amenity because of the erection of the poles.
- The proposal is not contrary to any site-specific objectives or zoning objective.
- The PA concerns are based on the absence of accurate information in the applicants planning statement.
- It is noted that 4 of the additional telecommunications installations are present within 2km from the site.
- Given the location of the other 4 installations the PA have concerns with regard the overconcentration of infrastructure.
- A revised “assessment of alternative sites’ should be submitted.
- Additional information submitted with the application included a rationale that all the sites identified in the applicants “search ring” where outside the stipulated c. 400m.
- The PA remained concerned with the overconcentration of telecommunications infrastructure and the precedent it would set regarding “sole user” infrastructure, rather than co-located facilities.
- With regard existing infrastructure at Lower Kilmacud Road (CTT.21.01) and Upper Kilmacud Road (CTT.21.021) the provision of similar infrastructure would result in the proliferation of this type of overground infrastructure.

3.2.2. Other Technical Reports

Parks & Landscape Services: No objection to the proposal.

Water Services: No objection to the proposal.

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

None received.

4.0 Planning History

None in the immediate vicinity of the site although several similar Section 254 Licences are referenced in the applicant's planning assessment and the grounds of appeal.

5.0 Legislative Context

5.1. Planning and Development Act, 2000

Section 254(1)(ee) of the Planning & Development Act, 2000 (as amended), states that a person shall not erect, construct, place or maintain overground electronic communications infrastructure and any associated physical infrastructure on, under, over or along a public road save in accordance with a licence under this section.

Section 254(6)(a) states that any person may appeal to the Board in relation to the granting, refusing, withdrawing, or continuing of a licence.

Section 254(5) states that, in considering an application for a licence, the planning authority, or the Board on appeal, shall have regard to:

- (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.

6.0 Policy Context

6.1. National Guidance

- 6.1.1. Telecommunications Antenna and Support Structures – Guidelines for Planning Authorities 1996

- Section 4.2: Design and Siting
- Section 4.3: Visual Impact
- Section 4.5: Sharing Facilities and Clustering

6.1.2. Circular PL07/12 updates sections 2.2 – 2.7 of the 1996 Guidelines. Of note, the 2012 Circular provided that:

- Health grounds should no longer be considered.
- Development contributions for broadband infrastructure should be waived.
- The request for bonds should be replaced with an appropriate condition requiring the removal of the mast.
- Conditions restricting the life of the permission should not be included
- Separation distances between masts and houses or schools should not be included in development plans.

6.2. **Dún Laoghaire- Rathdown County Development Plan 2022-2028**

6.2.1. Zoning

The site is unzoned (edge of a road) although is located beside lands zoned as Objective F, open space, where it is an objective “To preserve and provide for open space with ancillary active recreational amenities”

6.2.2. Section 12.9. Telecommunication

Proposals for telecommunications antennae and support structures shall demonstrate:

- Indicate compliance with the national guidelines;
- Include a map with all telecommunications structures within 1km and reasons why it is not feasible to share having regard to ‘Code of Practice on Sharing of Radio Sites’, issued by the Commission for Communications Regulation;
- Indicate the impact of the proposal on the nearby properties,
- Impacts on right of ways and walking routes,
- Shall not have a significant negative visual impact.

6.3. **Natural Heritage Designations**

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

6.4. **EIA Screening**

The subject development does not fall within a class for which EIAR is required.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

The grounds of appeal have been submitted by an agent on behalf of the applicant in relation to the refused licence. The issues raised are summarised below:

7.1.1. Location of the site

- The decision for over concentration is considered unreasonable in the absence of any visual impact assessment.
- The use of a search ring (i.e., c.400m radius) has been used to choose the location of the site.
- The site is on the edge of a residential development rather than in it, there is adequate space to access, it will blend with the street poles, will not interfere with the existing services and will not be in direct eye-line of any dwelling.

7.1.2. Planners report

- The positive and negative comments on the proposed development are noted.

7.1.3. Grounds of appeal

- The normal understanding of proliferation of structures usually relates to concerns about visual clutter because of the proximity of two or more similar type of structures.
- There has been no reference to visual impact, just proliferation.
- The location of the street poles relative to Lower Kilmacud Road (CTT.21.01) and Upper Kilmacud Road (CTT.21.021) are shown on Fig No 11.

- Due to technology limitations, a high capacity, multi-operator street pole solution is not available currently.
- Multiple operators cannot be collocated on one streetpole.
- For both operators to serve their blackspots in their network, the location of the telecommunications infrastructure must be located at the location identified.
- It is unreasonable to refuse of proliferation alone.
- Examples of street poles in Belfast indicate the street poles located in much closer proximity to each other without any apparent concerns from the relevant planning authorities (Fig No 13 and 14).

7.1.4. Accompanying documentation for separate S 254 licence applications at Goastown/ Lower Kilmacud Road/ Drummartin Road/

- Engineers report on a telecommunication structure
- Report on the proposed installation of Cignal Smart Street pole solutions at various locations in Dun Laoghaire Rathdown.
- Site assessment and background information for the above S254 License applications and decisions

7.2. Applicant Response

The appellant is the applicant.

7.3. Planning Authority Response

The PA response to the appeal includes all correspondence between the applicant and the PA and states they are satisfied with the refusal.

7.4. Observations

None

8.0 Assessment

I consider the main issues relevant to the assessment include:

- Compliance with Section 254 Criteria
- Appropriate Assessment

8.1. Compliance with Section 254 Criteria

8.2. Introduction

8.2.1. The subject site is located along the edge of a public road, fronting onto Kilmacud Upper and beside a bus stop. The proposal includes the erection of a telecommunications structure and cabinet which is to be located at the rear of the bus stop and adjacent to c. 2 m high block wall beside the residential open space associated with Marsham Court.

8.2.2. Section 254 (5) : In considering an application for a licence under this section a planning authority, or the Board on appeal, shall have regard to the items listed under subsection 254 (5);

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

8.3. The proper planning and sustainable development of the area,

8.3.1. The site is located along the edge of a public footpath which is unzoned in the Dún Laoghaire- Rathdown County Development Plan 2022-2028 adjacent to boundary wall and area of public open space associated with the residential area Marsham Court. The proposed development includes the erection of a streetpole and associated cabinet.

8.3.2. CGIs and a Planning Statement accompanied the application. The impact on the residential and visual amenity has been assessed by the PA and it was not considered the proposal would have a significant negative impact on the adjoining

residential amenity or the surrounding area. I note those illustrations submitted which include views from 6 locations, including from within the adjoining residential estate. I do not consider these illustrations indicate any significant negative impact on the visual amenity of the surrounding area.

8.3.3. The Section 254 Licence was refused by the PA for reason of overconcentration of telecommunications infrastructure in the vicinity of the site, further discussed below. The report of the PA considered there was no significant negative visual impact from the proposal.

8.3.4. Therefore, having regard to the characteristics of the proposed works, along the edge of a public road, it is not considered the proposal will have a negative impact on the surrounding area and is in keeping with the proper planning and sustainable development of the area.

8.4. Any relevant provisions of the development plan, or local area plan,

8.4.1. Section 12.9 of the current development plan provides guidance for the appropriate location of telecommunications infrastructure. In this regard any proposal is required to:

- comply with national guidelines,
- include a map with all telecommunications structures within 1km and reasons why it is not feasible to share having regard to 'Code of Practice on Sharing of Radio Sites', issued by the Commission for Communications Regulation;
- indicate the impact of the proposal on the nearby properties
- impacts on right of ways and walking routes
- Shall not have a significant negative visual impact

8.4.2. The application was accompanied by a planning statement which includes a map of other telecommunications infrastructure within c. 1km of the site, looks at the assessment of the site in line with UK guidance (The Greenbook, "Guidance on the Potential Location of Overground Telecommunications Infrastructure on public Roads") and provides information for compliance with the national, regional and local planning policy.

- 8.4.3. As stated below, the proposed development will not be in a location to cause any obstruction to pedestrians or road users. In addition, a visual impact assessment which accompanied the application clearly illustrates no significant negative impact on the surrounding area.
- 8.4.4. The Board will note Policy EI28: (Telecommunications Infrastructure) or Section 8.2.9.9 (Telecommunications Antennae and Structures) of the previous 2016-2022 development plan (under which the PA made the decision) did not specifically include a requirement for a map illustrating structures within 1km. This aside, I note the applicant has submitted an assessment of those structure within c. 1.12km from the site, therefore can comply with the most recent development plan requirements.
- 8.4.5. Overall, I am satisfied that the proposed development complies with the guidance in Section 12.9 of the current development plan (2022-2028).
- 8.5. The number and location of existing appliances, apparatuses, or structures on, under, over or along the public road.
- 8.5.1. Kilmacud Upper Road is a relatively long straight and wide road. Aside from the standard public lighting poles along either side of the road, there are no other taller structures. The telecommunications infrastructure is proposed along the centre of the road.
- 8.5.2. On foot of a further information request requesting a revised assessment on the feasibility of using one or more of the original 6 no sites, the applicant submitted a detailed assessment of 4 no. alternative sites indicating that these are outside the required search ring of c.400m. I note these locations are as follows:
- Drummartin Road (CTT.21.014) at 1.2km from the subject site,
 - Lower Kilmacud Road (CTT.21.018) at c. 320m from the subject site,
 - Goatstown Cross (CTT.21.019) at c. 1.5km from the subject site,
 - Upper Kilmacud Road (CTT.21.021) at c. 300m from the subject site.
- 8.5.3. The PA was not satisfied with the applicant's additional information and refused the licence for reason of overconcentration of telecommunications infrastructure of this type on, under or over the public road in the local area.

- 8.5.4. The grounds of appeal note the PA considers that although the site may be acceptable for such proposals the concerns relate mainly to the overconcentration, rather than the provision of co-located facilities.
- 8.5.5. The response to the further information includes reasons to “discount” those existing telecommunications. Reasons for not locating on existing sites include the lack of technology for high capacity, multi operator slimline infrastructure and the unavailability of sufficient coverage outside the search ring. I consider these are reasonable reasons to discount those existing sites for use and to justify the current location.
- 8.5.6. The grounds of appeal include a significant amount of information on similar structures in Belfast, N. Ireland. I do not consider these examples are particularly relevant to the assessment of this proposal as they merely illustrate the telecommunications structures in a different context. This aside, I consider there is sufficient information on the file to undertake a detailed assessment of the proposed works.

8.6. The convenience and safety of road users, including pedestrians.

- 8.6.1. The proposed pole and associated boxed infrastructure will be set back from the public footpath, adjacent to the wall. It is not considered the location of the infrastructure will cause any hazard to either pedestrians or road users. The Roads Department have no objection to the proposed development.

8.7. Conclusion

- 8.7.1. Therefore, having regard to the policies and objectives of the development plan, the siting and massing of the proposed works, the applicant’s justification for locating the proposal at this location and absence of any significant negative visual or residential impact, I consider the proposed acceptable.

8.8. **Appropriate Assessment**

- 8.8.1. Having regard to the nature and scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

9.0 Recommendation

- 9.1. I recommend that permission is granted for the proposed licence in accordance with the following reasons and considerations.

10.0 Reasons and Considerations

Having regard to the provisions of section 254 of the Planning and Development Act, 2000, as amended, national, regional and local policy objectives, as represented in the Dún Laoghaire- Rathdown County Development Plan 2022-2028 and the DOEHLG Section 28 Statutory Guidelines; “Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities, 1996, as updated by circular letter PL 07/12 in 2012, it is considered that subject to compliance with the conditions set out below, the proposed development would not be visually intrusive or seriously obtrusive to the amenities of the area or the residential amenities of properties in the vicinity and, would be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

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| 1. | <p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted, 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>No advertisement or advertisement structure shall be erected or displayed on the proposed structure or within the curtilage of the site without a prior grant of planning permission.</p> <p>Reason: In the interest of the visual amenity of the area.</p> |

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| 3. | <p>Details of the proposed colour scheme for the pole, antennas, equipment containers 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 amenity of the area.</p> |
| 4. | <p>Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.</p> <p>Reason: In the interest of public health.</p> |
| 5. | <p>In the event of the telecommunications structure and related ancillary structures becoming obsolete and being decommissioned, following discussions with the Area Engineer regarding the relocation of the public light contained upon the pole, the developer shall remove the pole and associated structures and return the site to its original condition, at their own expense.</p> <p>Reason: To ensure satisfactory reinstatement of the site upon decommissioning of the structure</p> |

Karen Hamilton
Senior Planning Inspector

02nd of May 2023