



An
Bord
Pleanála

Inspector's Report

ABP-314482-22

Development	Section 254 Licence for the installation of an 18m dual operator pole, associated equipment, together with ground based equipment cabinets and all associated development works for wireless data and broadband services.
Location	Ratoath Road/Westwood Road, Cardiffsbridge, Dublin 11.
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	TIL020-22
Applicant(s)	Emerald Tower Limited.
Type of Application	Section 254 Licence.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Emerald Tower Limited.
Observer(s)	None.
Date of Site Inspection	16/06/2023.
Inspector	Fiona Fair

1.0 Site Location and Description

- 1.1. The subject appeal site is located at the signalised junction of Ratoath Road/Westwood Road, Cardiffsbridge, Dublin 11. The site is located within a grass verge adjacent to a pedestrian path between Westwood and Rathoath Road.
- 1.2. The width of the footpath at this location varies from 1.60m to 1.75m
- 1.3. There are two existing traffic signposts and one street light pole within the grass verge. There are numerous lighting poles and traffic light poles in the general area and an esb meter box (painted blue with pastels) is located on the opposite side of the Rathoath Road to the northeast of the subject site.

2.0 Proposed Development

- 2.1. Section 254 Licence for the installation of an 18m dual operator pole, associated equipment, together with ground-based equipment cabinets and all associated development works for wireless data and broadband services.
- 2.2. The proposal includes an 18.00m high freestanding streetpole with 2 no. cabinets. One cabinet is 1.3m in length x 0.80m in depth, consisting of an area of 1.04 sq. m. The second cabinet is 1.90m in length x 0.80m in depth and consists of a total area of 1.52sq. m. the pole dimensions include a diameter of 0.406m, the area is 0.130 sq. m and the volume is 2.330 sq. m

3.0 Planning Authority Decision

3.1. Decision

Is unclear – Letter dated 2nd August from Roads Maintenance Services, Environment and Transportation Department states:

“In respect of telecommunications Cabinet & Associated Pole TIL020-22 Cappagh.

I wish to inform you of the decision for placing telecommunications cabinet at the above location.

I wish to advise you that the application for a Telecommunications Section 254 Licence for the above premises has been refused by order of the Executive manager

MO no. ET/1076/2022 on the grounds of a report from the Transportation Planning Division...”

No reason Stated. The Managers Order No. ET/1076/2022 is not attached.

I note the response to the First Appeal, by the PA, dated 10th October 2022 and the enclosed certified copy of the Executive Managers Order MO no. ET/1076/2022 containing the details of the “**Final Grant**”.

It States:

Licence Recommendation:

“Having examined the various reports and recommendations on this application and given that both the Transportation Planning and Planning & Development Divisions have no objection to the proposal, I recommend the refusal of two telecommunications cabinets and associated pole (height 18m, diameter 0.406m) on public footpath at Rathoath Road / Westwood Road, Cardiffsbridge, Dublin 11.”

“**Order:** Application for licence to place two telecommunications cabinets measuring (1.3m in length x 0.80m in width x 1.65 m in height), (1.90m in length x 0.80m in width x 1.65m in height) and associated pole (height 18 m, diameter 0.046) on the public footpath at Rathoath Road / Westwood Road, Cardiffsbridge, Dublin 11 is hereby refused.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning and Property Department have concerns regarding the approval of a licence for the placement of a telecommunications cabinet on the public road / footpath for the following reason:
 1. “Having regard to the proposed location of the telecommunications cabinets and street pole in very close proximity to the existing residential properties, within this residential area, and the relative width of the combined grass verge and footpath at this location, and the existing high level of urban infrastructure elements and telecommunications equipment present at this location the

proposed cabinets and pole should not be located at this location as it would prove to be seriously injurious to the residential amenities of properties in the vicinity in terms of negative visual impact and negative impact on residential character.

Consideration should be given by the applicant to placing the cabinets and pole in an alternative location in the vicinity that is at a remove from existing residential properties and located in a less prominent location”.

3.2.2. Other Technical Reports

- Transportation Planning Division: No objection. Report states:

“A telecommunications pole and cabinet at this location would not cause obstruction to pedestrians or traffic. It does not appear to impede on pedestrian flow at this point. On this basis, the transportation planning department / division has **no objections** to the proposed development”.

3.3. Prescribed Bodies

None relevant

3.4. Third Party Observations

The Planners report on file states that the PA did not receive an objection to the proposed development.

4.0 Planning History

None Relevant.

5.0 Policy Context

5.1. National Guidelines

- Planning and Development Act 2000, as amended. The development is considered under Section 254(1) (e) (e) of the Planning and Development Act 2000 as amended.
- National Broadband Plan, DCENR, 2012. Sets out a strategy to deliver high speed broadband across the State.
- Circular Letter PL07/12 – This circular updates the guidance document and specifically refers to temporary permissions, removal of separation distances from houses and schools, bonds and contributions, planning considerations related to location and design and health and safety matters, and the establishment of a register / database.
- Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities, DoE, 1996. Provide guidance on, amongst other things, siting of masts. This includes, in city suburbs, to co-locate telecommunications where possible and to locate new telecommunication masts in industrial or in industrially zoned land or commercial or retail areas. The guidance states that only as a last resort, if these alternatives are not available, should free-standing masts be located in a residential area or beside schools. Further, if such a location should become necessary, sites already developed for utilities should be considered and masts and antennae should be designed and adapted for the specific location, with the support structure be kept to the minimum height consistent with effective operation.

Development Plan

- 5.1.1. The PA made their assessment having regard to the Dublin City Development Plan 2016 – 2022. However, the City Development Plan has now changed and the pertinent statutory Plan is now the Dublin City Development Plan 2022 – 2028.

- 5.1.2. The site is not zoned, as roadways and footpaths are not zoned in the Dublin City Development Plan maps, the surrounding area is zoned 'Z1' - Sustainable Residential Neighbourhoods. Adjoining lands to the east are zoned 'Z9' – 'To preserve, provide and improve recreational amenity and open space and green networks.'
- 5.1.3. It is noted that 'Public Service Installations' are permissible developments on 'Z1' lands.

14.3.2 Unzoned Lands

Certain small areas of land within the city are unzoned or not covered by a specific zoning objective. These lands are illustrated in white on the zoning maps accompanying the plan and usually correspond with the location of the city's roads, bridges, train lines, or other key infrastructure installations. Development proposals in respect of these unzoned lands will be considered in accordance with the policies and objectives of the plan. Regard will also be had to their compatibility with adjacent land-uses and zonings.

Section 15.18.5 Telecommunications and Digital Connectivity

The provision and siting of telecommunications antennae shall take account of the Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities, (Department of Environment and Local Government, 1996), as revised by DECLG Circular Letter PL 07/12, and any successor guidance.

Telecommunications antennae and supporting structures should preferably be located on industrial estates or on lands zoned for industrial/employment uses. Possible locations in commercial areas, such as rooftop locations on tall buildings, may also be acceptable, subject to visual amenity considerations. In terms of the design of free-standing masts, masts and antennae should be designed for the specific location.

In assessing proposals for telecommunication antennae and support structures, factors such as the object in the wider townscape and the position of the object with respect to the skyline will be closely examined. These factors will be carefully considered when assessing proposals in a designated conservation area, open space amenity area, historic park, or in the vicinity of protected buildings, special

views or prospects, monuments or sites of archaeological importance. The location of antennae or support structures within any of these areas or in proximity to protected structures, archaeological sites and other monuments should be avoided.

Where existing support structures are not unduly obtrusive, the City Council will encourage co-location or sharing of digital connectivity infrastructure such as antennae on existing support structures, masts and tall buildings (see Policy SI48). Applicants must satisfy the City Council that they have made every reasonable effort to share with other operators.

5.2. **Natural Heritage Designations**

5.3. The site is not located within or adjacent to a Natura 2000 site.

5.4. **EIA Screening**

The proposed development is not of a type that constitutes an EIA project and environmental impact assessment is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A First Party appeal has been received from Entrust Planning and environmental on behalf of Emerald Tower Limited. It is summarised as follows:

- It is contended that the proposal is not a 'premises' as was described in the council's decision letter and it is further contended that there is a fundamental issue with this decision by Dublin City Council, as the decision letter cites the reason for refusal arising from a report received from the 'Transportation planning division', however, in the planners report the reason is not with roads department but from the planning department citing the location, proximity to residential properties and the proposal being seriously injurious to the residential properties in the vicinity of the proposal. Therefore, it is respectfully requested by the applicant that this appeal is dismissed as a result of this onerous decision which

cites transportation planning division issues and no such concerns are referred to in the planners report.

- Unlike existing street work poles this proposal is to support the Co-location of two different operators equipment within the same pole thus reducing the need for two separate poles in this area.
- It is proposed to remove a close by streetlight pole and to transferred the streetlight into the proposed pole thus adhering to the Development Plan and 1996 Government Guidelines in reducing the proliferation of telecommunication structures and other poles in this area.
- There are no existing telecommunication sites on which to co-locate in this residential housing area. The fact that it is wholly residential in nature is the reason why a street works type pole is proposed here as Eir mobile has not been able to provide coverage to this area over the years and there are no industrial or commercial areas or existing telecommunication structures here to site the equipment.
- The search ring is entirely residential in nature and government policy and consumer demand requires broadband coverage in all areas throughout the country including in residential areas and a blanket ban on residential areas as implied in the reason refusal is contrary to government policy in terms of providing an essential public service being broadband.
- Old mobile operators namely Three, Eir and Vodafone have an obligation to provide 100% coverage throughout the country.
- The nearest existing sites are too far away for the newer technologies to work including 4G and 5G technologies and to a large extent 3G due to the required data speeds for applications like social media, Internet browsing and downloading the technology range which depends on the number of users at any one time can be only several 100 meters.
- What is required is a balance between planning requirements and people's entitlements to modern communications facilities which affects their quality of life which is classed by the government as an essential public service like water and electricity so these services are required in all areas.

- During the alternative sites assessment there were no suitable existing telecommunications sites identified.
- The site is located on land owned by Dublin City Council under the control of the roads department. The applicant cannot propose a location within the adjoining green spaces which are under the control of Dublin City Parks Department, so it is confined to a location within grass verges, along roads or on footpaths under the control of the roads department.
- The proposed location was considered to be the furthest away from any dwellings in the search area.
- It is not known if the PA in its decision was cognisant of the fact that the applicant has to find a site location within the search area. There are no existing telecommunication structures or commercial industrial areas within the search area. The applicant cannot propose a location within an amenity green space so it is severely constrained where to propose a location, it is believed that the optimum location has been chosen here.
- Great care and attention has been given to the design of the proposed development.
- 4 viewpoints are identified for visual assessment purposes as they are considered the most visually important from a public amenity point of view. At Valley Park Road / Drive south of the site, Rathoath Road north of the site, Rathvilly Park / Road east of the site and Rathoath Road southeast of the site.
- The nearest residential dwellings to the proposed pole are approximately 35 meters from dwelling No. 32 Westwood Road (northwest) and approximately 30 metres from numbers 33 Westwood Road and 12 Valley Park Road (South). There are no significant visual impacts predicted as a result of the proposed development.
- A site notice was erected at the site for the duration of the application. No submissions were received in relation to the application.
- The proposal is for two operations to share the same pole by having their equipment encased inside the proposed slender pole thus removing the requirement locally for two poles as well as a street light pole.

- There is substantial precedent in relation to separation distances between telecommunication structures and dwellings.

6.2. Applicant Response

- Not Relevant.

6.3. Planning Authority Response

- Response received it is set out in detail, in section 3.1, of this report above, 'Planning Authority Decision'.

6.4. Observations

- None Received.

6.5. Further Responses

- Not Relevant.

7.0 Assessment

7.1.1. The proposed development is brought forward under section 254(1) of the Planning and Development Act 2000 (as amended). In their consideration of the development, under section 254(5) of the Act, the Board is required to 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.

7.1.2. Having regard to these requirements, local and national planning policy, the application details, the appeal submitted, all other documentation on file and my inspection of the site, I consider that the main issues for this appeal relate to:

- **Zoning and Compliance with Policy (The PA Decision)**
- **Visual Amenity**
- **Residential Amenity**
- **Appropriate Assessment**

Zoning and Compliance with Policy (The PA Decision)

7.1.3. The proposed street pole and antennae would have a height of 18m and a diameter of 0.406m with 2 no. cabinets.

Cabinet One (1.3m in length x 0.80m in width x 1.65 m in height), and

Cabinet two (1.90m in length x 0.80m in width x 1.65m in height)

- 7.2. The pole would be galvanised and painted. All cables would run internally. The structure has two dishes attached to it.
- 7.3. The proposal is for two operations to share the same pole by having their equipment encased inside the proposed slender pole thus removing the requirement locally for two poles as well as a street light pole.
- 7.4. The width of the footpath at this location varies from 1.60m to 1.75m
- 7.5. There are two existing traffic signposts and one street light pole within the grass verge. There are numerous lighting poles and traffic light poles in the general area and an Esb meter box (painted blue with pastels) is located on the opposite side of the Rathoath Road to the north east of the subject site.
- 7.5.1. In terms of zoning, the site is located adjacent to the public footpath in a grass verge, under the control of the Roads Department of DCC. It has an unclassified designation within the Dublin City Development Plan 2022 – 2028. Lands immediately adjoining are zoned ‘Z1’ Sustainable residential neighbourhoods. With the land use zoning: ‘To protect, provide and improve residential amenities’. It is noted that ‘Public Service Installations’ are ‘permitted in principle’ in ‘Z1’ zoned lands.
- 7.5.2. In the planning statement and documentation submitted, the applicant has reasoned why the location was chosen. Essentially, It is within the search ring. There is

adequate space to locate a street works solution and cabinet. There is fiber located close to this location to ensure connectivity into the network. The location will not interfere with the existing services or footpath pedestrian flow. The visual impact assessment indicates no visual obtrusion.

- 7.5.3. The site has no specific amenity designation. There are no protected scenic routes proximate. It is not within an ACA or within a SPA/SAC. There are no protected structures in the vicinity.
- 7.5.4. The telecommunications pole itself is nondescript in character and design and not dissimilar in scale or design of a lamp standard or traffic light pole. I consider the development as proposed to be acceptable in principle within this zoning objective.
- 7.5.5. I note the first party submission that the decision by the PA and MO. Order no. ET/1076/22 is onerous. That the proposal is not a 'premises' as was described in the council's decision letter. The decision letter cites the reason for refusal arising from a report received from the 'Transportation planning division', however, in the planners report the reason is not with roads department but from the planning department citing the location, proximity to residential properties and the proposal being seriously injurious to the residential properties in the vicinity of the proposal.
- 7.5.6. I consider that the PA's decision is onerous and unclear. The transportation planning division clearly have no issue with the proposal. The licence recommendation, MO. Order no. ET/1076/22, is confusing and conflicting, it refers to a grant of permission and then states a reason for refusal. I consider refusing permission on the grounds stated would be conflicting with similar recent permitted Section 254 licence applications for telecommunications structures, in the city suburbs, in greater proximity to houses, than in the current subject case. Dublin City Council PA have granted similar section 254 licences. I note in particular ABP 315098 at the Junction of Springdale Road and Edenmore Park, Dublin 5 and ABP 315012 at Seafield Grove/St. Gabriel's Road, Greenlanes, Clontarf, Dublin 3 both applications were granted by the City Council and are on appeal to An Bord Pleanala. I highlight for the attention of the Board that I have just recently reported on both of this application to the Board.

Visual Amenity

- 7.5.7. The visual impact assessment submitted with this application is noted. I have carried out a site visit and have had due consideration to the VIA and to conditions on the ground.
- 7.5.8. Telecommunications equipment is crucial functional infrastructure, which contributes to successful place making, in a modern day, functional public realm. While the structure will be visible, especially, as one observes the structure in middle to near distance, overall, having regard to the location, slender scale of the proposed development, and its nature, there would be no negative impact on the visual amenities of the area with only slight visual impacts being perceived. I do not consider the proposed development will unduly impact on the skyline or the streetscape when viewed from various vantage points. Cognisance is had to similar tall structures in the landscape (lighting poles) and roadside trees.

Residential Amenity

- 7.5.9. No submission or objection has been submitted to the proposed development.
- 7.5.10. The PA consider that the proposed location of the telecommunications cabinets and street pole in very close proximity to existing residential properties within this residential area and the narrow width of the combined grass verge and footpath at this location, and the existing high level of urban infrastructure elements and telecommunications equipment present at this location, the proposed cabinets and pole should not be located at this location as it will prove to be seriously injurious to the residential amenities of properties in the vicinity in terms of negative visual impact and negative impact on residential character.
- 7.5.11. The nearest residential dwellings to the proposed infrastructure are approximately 35 meters away, that being dwelling No. 32 Westwood Road (northwest) and approximately 30 metres from numbers 33 Westwood Road and 12 Valley Park Road (South). There are no significant residential amenity impacts predicted as a result of the proposed development.

- 7.5.12. I consider the report from the PA planning division to be conflicting with reports on similar applications for Section 254 licences in surrounding, proximate, suburban residential areas. This is necessary infrastructure and will assimilate into the area overtime. A condition should be attached to any decision to grant that the cabinet and pole be maintained regularly and be kept graffiti free. Also, that the cabinet shall have an anti-climb device fitted and pitched metal capping to the top surface of the cabinet to prevent sitting or standing on the cabinets.
- 7.5.13. The proposed development will be built in accordance with the current health and safety legislation and guidance which is ultra virus to the planning process. ComReg is the appropriate authority with responsibility for same. The proposed equipment and installations are designed to be in full compliance with the limits set by the Guidelines of the International Commission On Non-Ionising Radiation Protection (ICNIRP).
- 7.5.14. I note circular letter PL07/12 states planning considerations in the assessment of telecommunications infrastructure should be related to location and design and not health and safety matters. In my view the location of the telecommunications infrastructure within a residential area does not give rise to any issues in terms of residential amenity.
- 7.5.15. Considering the location, separation distances and the diameter and bulk of the structure I do not consider that the streetpole would reduce sunlight or daylight to any residence or open space area to any significant quantity. It is considered that while it may be argued that the structure will appear somewhere unsightly it is not considered that it would appear as overbearing. There will be no impact on residential amenity.
- 7.5.16. Overall, I see no reason to refuse permission on grounds of negative impact upon residential amenity.

Appropriate Assessment

- 7.5.17. Having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any 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.

8.0 Recommendation

It is recommended that permission be granted.

9.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2022 - 2028, the existing pattern of development in the area, and the nature and scale of the proposed development, 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 of property in the area, or give rise to a traffic or pedestrian 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 particulars.

Reason: In the interest of clarity.

2. (a) This permission shall apply for a period of five years from the date of this order. The telecommunications structure and related ancillary structures shall then be removed unless, prior to the end of the period, permission shall have been granted for their retention for a further period.

(b) The site shall be reinstated on removal of the telecommunications structure and ancillary structures. Details relating to the removal and reinstatement shall be submitted to and agreed in writing with the planning authority at least one month before the date of expiry of this permission.

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. Notwithstanding the provisions of the Planning and Development Regulations 2001, and any statutory provision amending or replacing them, the telecommunication structures shall not be altered and no additional apparatus shall be attached, without a prior grant of permission.

Reason: To clarify the nature and extend of the permitted development to which this permission relates and to facilitate a full assessment of any future alterations.

4. The proposed cabinets and pole shall be maintained regularly and shall be kept graffiti free.

Reason: In the interests of visual amenity of the area.

5. The cabinets shall have an anti-climb device fitted and pitched metal capping to the top surface of the cabinet to prevent sitting or standing on the cabinet.

Reason: In the interests of protecting residential amenity.

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.

Fiona Fair
Senior Planning Inspector

17. 06. 2023