



An
Bord
Pleanála

Inspector's Report

ABP-314492-22

Development	S254 licence for a wireless data and broadband 15m dual operator monopole and an ancillary works
Location	Wendell Avenue, Portmarnock, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	S254/07/22
Applicant(s)	Emerald Tower Limited
Type of Application	S.254 Licence
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Emerald Tower Limited
Observer(s)	None
Date of Site Inspection	9 th July 2023
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The appeal site comprises a small section of a grass verge on Wendell Avenue, Portmarnock, Co. Dublin. The verge runs parallel to a pedestrian footpath which is on the western side of the site. Further west is a Dunnes Stores Supermarket and an associated surface car park.
- 1.2. The site lies between an existing post box (cylindrical green pillar box) and a mature planted street tree. There is a bus shelter a short distance to the north and further trees are planted within the verge, both north and south. On the far side of the public road, to the east, the site faces towards the gable end of a detached house (70A Wendell Avenue).
- 1.3. The character of the receiving environment is suburban residential. The predominant form of housing is two-storey detached and semi-detached dwellings. There are various types of infrastructure and street fixtures in the area, including streetlights, lamp standards, road signage and floodlight columns associated with the supermarket.
- 1.4. The site is on land owned by Fingal County Council.

2.0 Proposed Development

- 2.1. The Applicant is seeking approval for a Section 254 Licence (five years duration), comprising a c. 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. Two small GPS beacons are affixed near the top of the pole.
- 2.3. There are two proposed ground-level cabinets. The larger cabinet has an approximate height of approximately 1.7m, width of 1.9m and depth of 0.8m. The smaller cabinet has an approximate height of approximately 1.7m, width of 1.3m and depth of 0.8m.

2.4. 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 is that having regard to the nature and height of the proposed communications infrastructure and its proximity to existing residential properties, it is considered that the proposed mast, in combination with other similar developments in the locality, would result in a proliferation of street works in the area, resulting in an unacceptable cumulative detrimental visual impact to the existing visual amenities of the area which would be contrary to the objectives of the Fingal Development Plan 2017-2023, in particular Objectives IT07 and IT08.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The subject site is not zoned. The land to the west is zoned Local Centre with the objective to 'protect, provide for and/or improve local centre facilities'. Telecommunications Structures are permitted in principle in the 'LC' zoning objective. The predominant zoning within the area is 'Residential' where Telecommunication Structures are neither 'permitted' or 'not permitted'.
- The Applicant states that there are no suitable existing telecommunications sites available in the search area. Two alternate sites were assessed, Portmarnock Sports and Leisure Club (Badminton Club) and Portmarnock Hotel and Golf Links, but these were significantly outside the required search ring and are already a base for the Eir network. Therefore, using these sites would not improve the coverage at the subject location.
- The proposed mast would benefit the area through improved mobile and wireless broadband service and address an identified relatively weak signal area/blackspot. However, there are other factors to consider.

- The character of the area is residential with relatively high quality and landscaped residential land to its north, east and south of the site.
- The proposed design is simple and contemporary. However, the cumulative impact of the proposed 15m street pole and cabinetry, in conjunction with the existing street signage and other utilities at this location, would be visually obtrusive to the existing visual amenities of the area.
- The proposal includes two cabinets adjacent the mast. They would further add to the existing clutter in the area.
- There is a concurrent application for a further monopole within c. 15m-20m of the appeal site. This, together with the subject development, would lead to the proliferation of street works in the locality and result in an unacceptable cumulative detrimental visual impact to the existing visual amenities of the area.
- The proposal is contrary to the Fingal Development Plan 2017-2023, particularly Objectives ITO and ITO8.
- It is recommended the proposed licence be refused.

3.2.2. Other Technical Reports

Water Services Department: No objection. However, notes that the subject site is in proximity to existing drainage infrastructure. The Applicant should engage with Fingal County Council prior to commencement of development.

Water Services: No objection, subject to standard condition.

4.0 Planning History

Subject Site

None.

Surrounding Area (c. 25m south of subject site)

ABP Ref. 314637-22 (Reg. Ref. S254/03/22):

The Planning Authority **refused** a S.254 licence in August 2022 for a proposed 15m monopole and associated telecommunications infrastructure / site works. The stated

reason for refusal was that the proposed development would result in an unacceptable cumulative visual impact which would be detrimental to the visual amenities of the area and, as such, would be contrary to the objectives of the Fingal Development Plan 2017-2023, in particular Objectives IT07 and IT08.

The Decision was subsequently appealed to An Bord Pleanála in September 2022. At the time of writing this report the Board had not yet made a Decision.

5.0 Policy Context

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

- 5.1.1. 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.
- 5.1.2. 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.
- 5.1.3. 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.
- 5.1.4. 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.

5.1.5. 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.

5.2. **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.

5.3. **Circular Letter PL11/2020**

5.3.1. 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.

5.4. **Fingal County Development Plan 2023-2029**

The Fingal Development Plan 2023-2029 was made on 22nd February 2023 and came into effect on 5th April 2023.

Zoning Map (Sheet No. 9)

The subject site is not zoned. It is within a grass verge area that runs parallel to a public road. The surrounding lands are mainly zoned RS – Residential (north, east and south) and LC – Local Centre (west).

Employment and Economy (Chapter 7)

EEO31: *Support the growth of business in the green and circular economy and the initiatives within the IDA strategy Driving Recovery and Sustainable Growth, or any superseding document, including through the accelerated roll-out of the National Broadband Plan.*

Infrastructure and Utilities (Chapter 11)

Policy IUP36: *Facilitate the coordinated provision of telecommunications / digital connectivity infrastructure at appropriate locations throughout the County and extension of telecommunications infrastructure including broadband connectivity as a means of improving economic competitiveness and enabling more flexible work practices.*

Policy IUP39: *Support the rollout of high-quality broadband throughout the County and facilitate the delivery of the National Broadband Plan and International fibre communications links, including full interconnection between the fibre networks in Northern Ireland and the Republic of Ireland.*

IUO48: *Promote and facilitate the provision of a high-quality ICT network and appropriate telecommunications infrastructure in accordance with the Fingal Digital Strategy 2020–23 (and any subsequent plan), and to support broadband connectivity and other innovative and advancing technologies within the County, whilst protecting the amenities of urban and rural areas*

IUO53: *Ensure a high-quality design of masts, towers, antennae and other such telecommunications infrastructure in the interests of visual amenity and the protection of sensitive landscapes in the County.*

IUO54: *Support the appropriate use of existing assets (i.e. lighting, street furniture etc) for the deployment of telecoms equipment and to encourage the sharing and co-location of digital connectivity infrastructure in the interests of visual amenity and protection of the built heritage.*

Development Management Standards (Chapter 14)

DMSO17: *Where possible, new utility structures such as electricity substations and telecommunication equipment cabinets should not be located adjacent or forward of the front building line of buildings or on areas of open space.*

DMSO18: *Require new utility structures such as electricity substations and telecommunication equipment cabinets to be of a high-quality design and to be maintained to a high standard by the relevant service provider.*

DMSO223: *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.*

DMSO224: *Requires certain information with respect to telecommunications structures at application stage.*

5.5. **Natural Heritage Designations**

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

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- The proposal is at an optimum location as it is within the search ring as shown in section 2.5 (of the appeal). Unlike other existing monopoles, it would support the co-location of two different operators within the same pole structure, thus, reducing the need for two separate poles. This is in accordance with the Development Plan and 1996 Government Guidelines in reducing the proliferation of telecommunications structures in an area.
- The proposed development is the lowest height possible to 'see' over surrounding trees and other structures. The preferred streetpole height is a standard 18m. However, the proposal has been reduced to 15m to protect residential amenity as much as possible.

- The proposal is not subject to any heritage, landscape or area of ecological sensitivity.
- The Visual Impact Assessment (VIA) confirms that the level of effect would generally be 'moderate' to 'low' with a low magnitude of change. There are no significant visual impacts predicted.
- The proposal to house two separate sets of operator equipment inside the same pole would help reduce the proliferation of structures in the area and, therefore, reduce cumulative visual impact in the future. There would be no cumulative visual impact arising due to the proposal.
- The Planning Authority has not had due consideration to the fact that there is strong demand for broadband services in this locality, or that there are no existing telecommunications structures within the immediate area. A blanket ban for such a proposal is not considered fair or reasonable as all operators are required to provide broadband services to the entire country, including for residential areas.
- The proposed development is in accordance with national, regional and local policy, as well as the 1996 Government Guidelines pertaining to telecommunications.
- The Board is requested to grant the proposed licence.

6.2. Planning Authority Response

- The proposed development would be 15m from the nearest residential property and in a prominent location.
- An additional pole is proposed at this general location and there are concerns over the proliferation of such structures at the site.
- The Board is requested to uphold the Decision of the Planning Authority.

7.0 Assessment

7.1.1. The main planning considerations relevant to this appeal case are:

- Visual and Residential Amenity

- Proliferation of telecommunications infrastructure in the area
- Appropriate Assessment

Visual and Residential Amenity

- 7.1.2. The Planning Authority's reason for refusal is that having regard to the nature and height of the proposed communication infrastructure and proximity to existing residential properties, it is considered that the proposed mast, in combination with other similar developments in the locality, would result in a proliferation of streetworks in the area resulting in negative visual impact for the area, and which would be contrary to the objectives of the Fingal Development Plan 2017-2023, in particular Objectives IT07 and IT08.
- 7.1.3. The 2017-2023 Development Plan has been recently superseded, and the current version of relevant statutory plan for the area is now the Fingal Development Plan 2023-2029. I note for the Board's convenience however that Objective IT07 required best practice in siting and design in relation to erecting communication antennae, whilst Objective IT08 was to 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.
- 7.1.4. It is acknowledged that the proposed monopole and ancillary equipment cabinets would have a potential impact on the local environment in terms of visual intrusion and clutter in what is a mainly residential area. I acknowledge that suburban settings, such as these, are recognised as being particularly sensitive from both a visual and residential amenity perspective. This is referenced in Section 4.3 of the 'Guidelines for Planning Authorities on Telecommunications Antennae and Support Structures', 1996 ('the 1996 Guidelines'). In this regard, telecommunication facilities are encouraged to primarily locate within existing industrial estates, or industrially zoned land, in the vicinity of larger suburban areas or towns, insofar as possible.
- 7.1.5. The Applicant has addressed this issue as part of their application, however. As part of their alternative sites assessment, it was found that no suitable existing telecommunications sites were available which would be capable of providing the required coverage upgrades. It is also submitted that there is a general absence of existing tall buildings in the area and that alternative existing Comreg sites were too far away to provide adequate coverage for the target area, including, for example the

Portmarnock Sports and Leisure Club and Portmarnock Hotel and Golf Links. Therefore, it was not possible for the Applicant to co-locate on an existing telecommunications structure whilst also providing the required network improvements. Having reviewed the information contained within the application, appeal submission, and the existing coverage information that is available on the ComReg website, I am satisfied that alternative sites had been duly considered by the Applicant, that the proposal is justified from a technical operations perspective. It is clear to me that the proposed telecoms infrastructure would help to improve the existing service coverage for the locality.

- 7.1.6. The Visual Impact Assessment (VIA) submitted with the application comprises 4 no. viewpoints from various nearby and further afield locations. There are two viewpoints from the north (Wendell Avenue), one from the east (also Wendell Avenue) and one from south (Carrickhill Rise). Having physically visited the site and undertaken a visual inspection up close, and from the wider surrounding vicinity, I consider the photomontage booklet an accurate depiction of how the proposed development would appear as if built.
- 7.1.7. The full extent of the proposed infrastructure, including both the mast and cabinets, would be very visible from closeup, such as from Viewpoint 3, but this would not be unusual for this type of development, in my opinion. The proposed monopole structure adopts a slender and modern appearance, and is of a simpler design, which would minimise the potential for negative visual impact. Several longer views would be partially blocked by existing tree cover in the area (Viewpoint 1) and the supermarket building (Viewpoint 4). I acknowledge the proposed structure would be more visible than some of the existing infrastructure and street fixtures along Wendell Avenue, including trees and lamp standards. However, I do not consider that it would be so visually jarring or inharmonious that it would seriously injure the visual and residential amenity of its receiving environment.
- 7.1.8. There are no adjacent houses directly facing the appeal site. It is situated opposite the gable end of 70A Wendell Avenue (a detached house), which is the closest dwelling to the site, across the Wendell Avenue to the east. There are large evergreen bushes and tall boundary walls in the front gardens of some of these properties. This would further assist in screening and reducing visual impact for these properties. I do not consider the supermarket a sensitive receptor, given its

commercial nature, and note that the proposed telecoms equipment would take up a relatively small footprint. There are no sensitive environmental, conservation or scenic view objectives or designations that apply to the site.

- 7.1.9. The 1996 Guidelines state that some masts will remain quite noticeable, despite best precautions. However, as noted previously, the proposed monopole also adopts a slim contemporary appearance and, in my opinion, it has sought to minimise its potential for visual impact by selecting a mast of low to medium height. The 1996 Guidelines state that the height of these structures, when the requirements of the backbone network are taken into account, can range from 12m to 60m though most typically they will be between 20m and 40m. The proposed monopole is 15m. The adjacent lighting columns on the street and within the supermarket surface car park are of a slightly lower, but generally comparable, height.
- 7.1.10. From inspecting the drawings submitted as part of the original application, it would appear the monopole structure would be coated in a grey muted paint, which is typical of telecommunications infrastructure seeking to assimilate with the typical sky colour in Ireland. The cabinets are to be painted a dark fir green. I consider the shade of colour acceptable in both instances.
- 7.1.11. Planning Circular PL07/12 recommends that Development Plans should avoid including any policy specifying a minimum separation distance between telecom installations, and schools / residential areas. There are no schools in the vicinity of the site, and whilst the site is situated in a suburban residential setting, I note that such locations can be permitted as a last resort where a viable case has been demonstrated that alternative sites are either unavailable or unsuitable. In this regard, I note that the Applicant provided an assessment with a detailed rationale for selecting the subject site over other candidate sites (as noted in Section 7.1.5 above).
- 7.1.12. I conclude that the proposed development would not present as overly dominant, or be an overbearing feature, in this setting and that the Applicant has employed appropriate mitigation measures to reduce the potential for residential amenity and visual impacts arising. Therefore, I consider the proposal to be in accordance with the provisions of the Fingal Development Plan 2023-2029, including Objectives IUO53 and DMSO18, which seek to achieve high-quality design and high standards

for masts, towers, antennae and other such telecommunications infrastructure in the interests of visual amenity, respectively.

Proliferation of telecommunications infrastructure in the area

- 7.1.13. The Planning Authority, in coming to their Decision, cited a current licence application for a similar installation within the same grass verge roughly 25m south of the appeal site. It is for a 15m high monopole and associated site works to accommodate a single telecommunications operator. It was refused by Fingal County Council in August 2022 and is now under consideration by the Board having been appealed by the first party in September 2022 (ABP Ref. 314637-22; Reg. Ref. S254/03/22 refer).
- 7.1.14. In relation to co-location and sharing of facilities, Section 4.5 of the 1996 Guidelines states that sharing of installations (antennae support structures) will normally reduce the visual impact on the landscape and that service providers are encouraged to share. Furthermore, Objective IUO54 of the Development Plan is to support the appropriate use of existing assets (i.e., lighting, street furniture etc) for the deployment of telecoms equipment and to encourage the sharing and co-location of digital connectivity infrastructure in the interests of visual amenity and protection of built heritage. In this regard, I note that the Applicant confirms that they actively encourage the sharing of all infrastructure in their portfolio, and that this also applies to the subject proposal.
- 7.1.15. Having regard to this, the Board may wish to consider the licence application made under Reg. Ref. S254/03/22 (ABP Ref. 314637-22) in tandem with the subject proposal, particularly given the Planning Authority's concerns regarding the proliferation of such streetworks and potential for cumulative detrimental impact to the visual amenity of the area. I note that the appeal for the subject proposal makes specific provision to accommodate dual operators by way of providing a second equipment cabinet and that the monopole would be able to internally house two separate sets of equipment. The purpose of this, as stated by the Applicant, is to reduce the proliferation of structures in the area and to mitigate the potential for visual impact on the receiving environment.

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.

8.0 Recommendation

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

9.0 Reasons and Considerations

- 9.1. Having regard to the nature, scale and design of the proposed development, which is a 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 2023-2029, 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 result in a significant negative visual impact on the surrounding vicinity or seriously injure the residential amenities of the area. 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
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	<p>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>a) This licence 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, 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, 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>
3.	<p>Details of the proposed colour scheme for the telecommunications structure and ancillary structures 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>
4.	<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>

[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.]

Ian Boyle
Senior Planning Inspector

10th July 2023