



An
Bord
Pleanála

Inspector's Report

ABP-314645-22

Development	Section 254 Licence for 2 telecommunications cabinet and 1 associated 18m pole.
Location	Willow Park Road, Jamestown Great, Ballymun, Dublin 11
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	TIL017-22
Applicant(s)	Emerald Tower Limited.
Type of Application	Section 254 Licence.
Planning Authority Decision	
Type of Appeal	First Party
Appellant(s)	Emeral Tower Limited.
Observer(s)	None.
Date of Site Inspection	17.06.2023
Inspector	Fiona Fair

1.0 Site Location and Description

- 1.1. The site is located on a grass verge adjacent to Willow Park Road, just before Pinewood Avenue. The proposal is situated on a grass verge between two small trees, and a pole located in close proximity to the proposal. A grass area is situated to the east of the site with a walkway with further trees to the east. Small trees and streetlights line both sides on the Willow Park Road and into Pinewood Avenue. In addition, along Willow Park Road to the south of the site, poles with overhead cables are very common along both sides of the road, road signs and street furniture are also common. The grass verge is 1.8m in width with the footpath beside the grass verge an additional 1.6m in width. The proposed pole is located approximately 16m from the junction with Pinewood Avenue.

2.0 Proposed Development

- 2.1. This is an application for a licence to place two no. telecommunication cabinets and a shared streetpole on a grass verge, behind the back of the pavement, on the east side of Willow Park Road, in front of a grass area on the corner of Pinewood Avenue and Willow Park Road, directly opposite no. 51 Willow Park Road.
- 2.2. The cabinets are shown to be c. 1.9m x 0.8m and c. 1.3m x c.0.8m, and both are c.1.65m in height. The cabinets would be clad in green painted metal. The pole is sited between the cabinets and is indicated in the application to be a c.18m Steelworks pole, 'with Eir's antennas to be encased inside the top of the pole, with space for a second operators antennas below the Eir antenna'.
- 2.3. The cabinets at 0.8m deep, are proposed to be located within the grass verge.

3.0 Planning Authority Decision

3.1. Decision

The Chief Executive Managers Order MO No. ET/1170/22 (dated 12.08.2022) states:

“Order: Application for a licence to place two telecommunications cabinets measuring externally (1.3mL x 0.8mW x 1.65mH and 1.9mL x 0.8mW x 1.65mH) and

associated pole (height 18m, diameter 0.406m) on the public footpath on Willow Park Road, Ballymun Dublin, is hereby refused.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report from the Planning and Property Development Department (04/07/2022) raises 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 existing residential properties, within this residential area, and the relative narrow width of the combined grass verge and footpath at this location, the Planning and Property Development Department considers that the proposed cabinets and pole should be not 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 in a less prominent location

3.2.2. Other Technical Reports

- Transportation Planning Division: Report states:

“The proposed cabinets and pole are located on the eastern side of Willow Park Road on the grass verge beside the junction with Pinewood Ave.

A recommended path width of 1.8m is required for footpath pedestrian clearance. The existing footpath is substandard presently at 1.6 metres. The cabinets at 0.8 meters deep are proposed to be located at the existing grass verge. This division has no objections to the development as it will not infringe on the existing footpath.

3.3. **Prescribed Bodies**

- None Received

3.4. **Third Party Observations**

- None Received

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 zoned 'Z1' - Sustainable Residential Neighbourhoods.
- 5.1.3. It is noted that 'Public Service Installations' are permissible developments on 'Z1' lands.

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**

5.5. 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 submitted by Entrust Planning and Environmental on behalf of the applicant, Emerald Tower Limited. It is summarised as follows:

- It is considered by the appellant that the subject proposal is an excellent one. Unlike existing streetworks poles, this proposal is to support the co-location of two different operator's equipment within the same pole, thus obviating the need for two separate poles in this area by having only one thus adhering to the City Development Plan and 1996 Government Guidelines.
- There are no suitable existing structures in this search area.
- The area suffers from a severe lack of high-speed wireless broadband and data services. Eir would not be looking to provide the much needed coverage here if it could do so by its three existing structures in the wider area. Due to the sheer amount of intervening vegetation and built form as well as the increasing capacity issues on its network as a result of increasing demand

here in this densely populated area for data services, means Eir cannot meet its wireless broadband and data objectives here without having a new structure which is proposed as a last resort in accordance with the sequencing approach to finding a site in accordance with the 1996 Government Guidelines.

- The location has been selected on the basis that it is the optimum location in this search area, which is very confined and was chosen on the basis that it has the least possible impact on residential amenity in this search ring and is considered to be the only option which is a last resort.
- The height is the lowest height possible to 'see' over surrounding high trees and built form in the area for two operators to share the same pole.
- All the mobile operators namely Three, Eir and Vodafone have an obligation to provide 100% coverage throughout the country, including all residential areas and including this location.
- 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 hundred metres.
- 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.
- The site was chosen as it has the following characteristics:
 - Be capable of being developed; sufficient space for pole and cabinets, avoiding underground utilities and free of overhead obstructions like cables;
 - Sufficient pavement space for wheelchair access and buggys/prams;
 - Available power and fibre connections nearby;
 - Least impact on residential amenity in search ring.

- Five existing alternative site assessments were carried out and discounted.
- The site is located on land owned by Dublin City Council, under the control of the Roads Department. The appellant 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 narrow 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 Planning Authority in its decision was cognisant of the fact that it has to find a site location within the search area, there are no existing telecommunications structures or commercial/industrial areas within it and it cannot propose a location within an amenity green space so it is severely constrained where to propose a location, so it is believed that the optimum location has been chosen here.
- Great care and attention have been given to the design of the Proposed Development.
 - It is proposed that the structure will be coloured in a galvanised (CL 3093W) finish and will assimilate with the typical sky colour in Ireland and surrounding street infrastructure, however, it is possible for the proposed development to be painted in any colour including a dark fir green or black finish which could be requested by way of a conditional License;
 - Slimline, slender and un-fussy design to minimise any negative visual impacts;
 - Pole design to blend in with existing street infrastructure such as street lighting, road signs poles and traffic lights poles;
 - Sited in relatively close proximity to existing trees along Willow Park Road for maximum screening purposes along the streetscape;
- Consideration has been given to technical, engineering, environmental, health and safety and land use planning viability in the siting and design of the proposed telecommunication's installation. The height of the structure has

been driven by the requirement to achieve the desired level of coverage to the wider area.

- Compliance with emission limits is regulated by ComReg.
- The proposal is accompanied with a Visual Impact Assessment. The most important viewpoints (VPs) are identified as:
 - VP1 – Willow Park Road North of the site
 - VP2 – Pinewood Avenue East of the site
 - VP3 – Willow Park Road South of the site
 - VP4 – Willow Park Road South of the site
- There are no significant visual impacts predicted as a result of the proposed development.
- The nearest residential dwelling to the proposed pole is approximately 21m from dwelling no. 49 Willow Park Road across the road to the west of the site location.
- There was a site notice erected at the site for the duration of the application process which has not been removed and there were no submissions received in relation to the application.
- The appellant sought to locate the proposal c.10m south of where it is proposed so it would be more centrally in line with the centre boundary wall between No. 49 and No. 47 Willow Park Road, however there is a tree present there so it is proposed as shown, however if the Board wished for it to be moved slightly to the south to where the semi-mature tree is shown, it is requested that this may be done by way of a conditional grant of permission along with the tree removal and for the tree to be replaced by a minimum of two semi-mature trees in the green space to the east of the site location for which the appellant will do at its own expense.
- The Board has made many rulings on separation distances between telecommunications structures and dwellings over the years and there is substantial precedent in relation to this subject matter.

- It is considered that the proposed development would not be seriously injurious to the residential amenities of the area, would not be visually prominent and or obtrusive and as such it is respectfully requested that the Board grants permission for the proposed development.
- Broadband is now considered an essential public service like water and electricity and the appellant urges the Board to assess the planning balance carefully here in terms of the public benefits associated with the proposal as opposed to the limited dis-benefits (limited visual impact) which are considered to be far outweighed in accordance with national and local policy.

6.2. Applicant Response

- None Relevant.

6.3. Planning Authority Response

- The PA have submitted a certified copy of the Executive Manager's Order MO No. ET/1170/22 containing the details of the final grant and summarised in full under section 3.1 of this report Planning Authority's Decision.

6.4. Observations

- None Received.

6.5. Further Responses

- None 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**

7.2. Zoning and Compliance with Policy (The PA Decision)

7.2.1. This is an application for a licence to place two no. telecommunication cabinets and a shared streetpole on a grass verge, behind the back of the pavement, on the east side of Willow Park Road, in front of a grass area on the corner of Pinewood Avenue and Willow Park Road, directly opposite no. 51 Willow Park Road.

7.2.2. 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)

7.2.3. The pole would be galvanised and painted. All cables would run internally. The structure will have two 300mm goose grey galvanised dishes attached to it.

- 7.2.4. The proposal is for two operations to share the same pole by having their equipment encased inside the proposed slender pole.
- 7.2.5. The cabinets at 0.8m deep, are proposed to be located within the grass verge. The width of the footpath at this location is presently 1.6m. The Transportation Division has no objection to the proposed development as, they consider, it will not infringe on the existing footpath, albeit it is slightly substandard at this location i.e. less than the recommended 1.8m path width for footpath pedestrian clearance.
- 7.2.6. 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 and is zoned Z1 Sustainable residential neighbourhoods within the Dublin City Development Plan 2022 – 2028. 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.
- 7.2.7. In the planning statement and documentation submitted, the applicant has reasoned why the location was chosen.
- 7.2.8. Essentially it is:
- Capable of being developed; sufficient space for pole and cabinets, avoiding underground utilities and free of overhead obstructions like cables;
 - Sufficient pavement space for wheelchair access and buggys/prams;
 - Available power and fibre connections nearby;
 - Least impact on residential amenity in search ring.
- 7.2.9. 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.
- 7.2.10. 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.
- 7.2.11. I note the first party appeal submission with respect to Development Plan Policy and National Policy. Broadband is now considered an essential public service like water and

electricity and the appellant urges the Board to assess the planning balance carefully here in terms of the public benefits associated with the proposal as opposed to the limited dis-benefits (limited visual impact) which are considered to be far outweighed in accordance with national and local policy.

7.2.12. Having dealt with a number of similar Section 254 appeals within the Dublin City Council administrative area, I consider that a clear precedent has been set, in favor, of similar telecommunications poles and associated cabinets. It is my opinion to refuse permission on the grounds stated in the planning and property development department's report would be conflicting with similar recent Section 254 licence applications granted. I note the recommendations to grant permission for telecommunications structures, in the Dublin city suburbs, in greater proximity to houses, than in the current subject case. 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 these application to the Board.

7.3. Visual Amenity

7.3.1. A visual impact assessment and photomontages have been submitted with this application.

7.3.2. 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 scale of the proposed development, 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. The proposed development would not seriously injure the visual amenities of the area and would not be visually prominent and obtrusive at this location. Cognisance is had to similar tall structures in the landscape (lighting poles) and roadside trees. It will assimilate into the streetscape over time.

7.4. Residential Amenity

7.4.1. No submission or objection has been submitted to the proposed development.

7.4.2. 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, 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.

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 in a less prominent location.’

7.4.3. The nearest residential dwelling to the proposed development is no. 49 Willow Park Road across the road to the west of the site, approximately 21m distant.

7.4.4. The first party submit that there was a site notice erected at the site for the duration of the application process which has not been removed and there were no submissions received in relation to the application. The site notice was intact and visible at the time of my site visit.

7.4.5. I acknowledge the proposal by the first party in the first party appeal to relocate the proposal c.10m south of where it is proposed so it would be more centrally in line with the centre boundary wall between No. 49 and No. 47 Willow Park Road. Should this proposal be considered more favourable then a semi-mature tree would have to be removed. The first party are favourable to a condition on any grant of permission to relocate the proposed development 10 m to the south and for the tree to be replaced by a minimum of two semi-mature trees in the green space to the east of the site location for which the appellant will do at its own expense.

7.4.6. If the Board considers that relocation of the proposal 10 m to the south is appropriate, I would advise that a new site notice may be required. While there is no legal onus on the applicants to place a site notice at the proposed location it is a requirement of DCC and standard procedure for Section 254 licences. To move the

location at this point, by way of condition, without a due site notice would be inappropriate in my opinion.

- 7.4.7. This is necessary infrastructure and will assimilate into the area overtime. It does not give rise to visual clutter or proliferation of telecommunications structures at this location. There will be no significant impacts as a result of this proposal. I recommend that 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.
- 7.4.8. 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).
- 7.4.9. 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.
- 7.4.10. 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.
- 7.4.11. Overall, I see no reason to refuse permission on grounds of negative impact upon residential amenity.

7.5. **Appropriate Assessment**

- 7.5.1. 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