



An
Bord
Pleanála

Inspector's Report

ABP-314705-22

Development	Section 254 Licence for a 15m signal pole and associated controls cabinet.
Location	Dunville Avenue, Ranelagh, Dublin 6.
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	TIL011-22
Applicant(s)	On Tower Ireland Ltd.
Type of Application	Section 254 Licence
Planning Authority Decision	Grant licence
Type of Appeal	Third Party
Appellant(s)	Colm Walsh/Dunville Avenue Traders
Observer(s)	None
Date of Site Inspection	13 th April 2023
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of approximately 6sq.m is located on the north side of Dunville Avenue – close to the junction with Oakley Road. The 15m signal pole (sky grey colour) and the controls cabinet (British racing green colour) are in place. The site is located at the back of a wide public footpath; in a location where there are timber benches, planters, book boxes and a number of semi-mature deciduous trees. There is car-parking on both sides of the road at this location. This part of Dunville Avenue is characterised by two- and three-storey mixed commercial and residential development. Immediately to the north of the site is the rear garden of Wigmore Lodge (24 Oakley Road) – a two-storey-over-raised-basement house, which is a Protected Structure. The boundary at this location is a 1.75m high wall which is capped and dashed. There is a row of semi-mature deciduous trees growing just inside the rear garden wall at this location. In addition, there are two mature deciduous trees growing in the front garden of Wigmore Lodge – on the junction of Dunville Avenue and Oakley Road. There is a postal pillar box, lighting column and sign-post pole in the immediate vicinity of the signal pole and controls cabinet.

2.0 Proposed Development

- 2.1. On 5th May 2022, a section 254 licence was sought from Dublin City Council (DCC), to erect a telecommunications cabinet (1.9m long x 0.8m wide and 1.65m high) and associated 15m high signal pole (0.36m diameter) with mobile telephony attached. The development is stated to be a replacement for an existing Three mast (DU0066) – located some 720m from the site at Garland House, Rathmines.
- 2.1.1. The application is accompanied by a Planning Statement and a visual impact study – dated 5th May 2022.
- 2.2. On 20th July 2022, the applicant submitted additional information to DCC in relation to the location of the mast and the ducting required for a Road Opening Licence plan.

3.0 Planning Authority Decision

3.1. Decision

Dublin City Council issued a five-year licence in relation to this application, on 23rd August 2022. The licence was issued subject to 25 no. conditions – the principal of which may be summarised as follows-

1. Development to be carried out in accordance with plans and particulars received by DCC on 9th May 2022.
4. No additional dishes, antennae or other equipment shall be attached to the signal pole, without first obtaining written permission.
5. The licence may not be assigned or sub-let.
7. Relates to advertising structures.
9. Refers to payment of the appropriate licence fee.
14. Refers to the need to obtain a Road Opening Licence for construction works.
23. Licence is for a period of 5 years from the date of the licence.
24. The controls cabinet shall have an anti-climbing device fitted.
25. Requires the controls cabinet be kept free of graffiti.

3.2. Dublin City Council Reports

3.2.1. Planning Department

There is a report, dated 7th June 2022, objecting to the proposed development: stating that the damage to the root-spread of a nearby tree, and impact on a Protected Structure warrant refusal of the licence application.

There is a report dated 8th August 2022, raising no objection to the licence – subject to 3 conditions relating to an anti-climbing device for the controls cabinet, maintenance of the controls cabinet in relation to graffiti, and clarification of the red-line boundary of the site.

3.2.2. Transportation Planning Division

The report, dated 7th June 2022, raises no objection to the proposed development, but because of concerns of the Parks Bio-diversity & Landscape Services Division, the licence should be refused.

3.2.3. Parks Bio-diversity & Landscape Services Division

E-mail, dated 7th June 2022, indicates likely significant impact on tree roots. Licence application should be refused.

3.3. **Third Party Observations**

There is an objection from Colm Walsh, representing the Dunville Avenue traders.

4.0 **Planning History**

There is no recent relevant planning or licensing history pertaining to this site.

5.0 **Policy Context**

5.1. **Development Plan**

The Dublin City Development Plan 2022-2028 is of relevance. The site is not zoned. Wigmore Lodge (24 Oakley Road) is a Protected Structure – ref. 5965. Section 15.18.5 of the Plan deals with telecommunications and digital connectivity, and for reference, is quoted here in its entirety.

All new developments will be required to provide for open access connectivity arrangements directly to individual premises to enable service provider competition and consumer choice in line with Policy SI45 of the development plan.

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 SI47). Applicants must satisfy the City Council that they have made every reasonable effort to share with other operators.

Policy SI45 states, in relation to 'Support for Digital Connectivity'-

To support and facilitate the sustainable development of high-quality digital connectivity infrastructure throughout the city in order to provide for enhanced and balanced digital connectivity that future-proofs Dublin City and protects its economic competitiveness [sic] (for further guidance see Section 15.18.5).

Policy SI48 states, in relation to 'Sharing and Co-Location of Digital Connectivity Infrastructure' –

To support the appropriate use of existing assets such as lighting, traffic poles and street furniture for the deployment of telecoms equipment and to encourage the sharing and co-location of digital connectivity infrastructure (including small cells, access points, communications masts and antennae) in order to avoid spatially uncoordinated and duplicitous [sic] provision that

makes inefficient use of city space and negatively impacts on visual amenity and built heritage.

5.2. **Natural Heritage Designations**

There are no Natural Heritage Designations either within or immediately adjoining the site. There will be no connection to the public sewerage network. Significant effects are not likely to arise, either alone or in combination with other plans or projects.

5.3. **EIA Screening**

Having regard to the nature and scale of the development for licensing, within a fully serviced suburban location; it is considered that there is no likelihood of significant effects on the environment arising. The requirement for environmental impact assessment can, therefore, be excluded at preliminary examination stage. A screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. On 28th September 2022, Colm Walsh/Dunville Avenue Traders made an appeal to the Board under Section 254.

- The appellant represents the Dunville Avenue Traders, who have been enhancing and maintaining the public realm at this location for over 5 years.
- The public notification of the erection of the signal pole and controls cabinet was improperly displayed.
- The location is not suitable – being a sun-trap with benches and a notice board. The area is a great asset for the community – and was particularly so, during COVID. The proposal is not a good use for this valuable community space.

6.1.2. The appeal is accompanied by some coloured photograph plates of the area.

6.2. Applicant Response

The response of David Mulcahy Planning Consultants Ltd, agent on behalf of the applicant, On Tower Ireland Ltd, received by the Board on 13th October 2022, can be summarised as follows-

- There is no evidence submitted that Colm Walsh represents Dunville Avenue traders: at very least, a letter of signatures should have been included. The Board must conclude that the appellant represents himself.
- It is accepted that this area of the street contains a number of benches which enhance the amenity of the street. The proposed signal pole will not interfere with the use and enjoyment of the benches.
- There is no legal requirement to erect any site notice for a section 254 licence application. DCC requested the applicant to erect such a notice; and this was done; on 5th May 2022.
- The footprint of the signal pole and controls cabinet is small, and will not interfere with the footpath or residents congregating.

6.3. Planning Authority Response

None received.

7.0 Assessment

7.1. Section 254 Application Process

7.1.1. Section 254(5) of the Planning and Development Act, 2000 (as amended) states that in considering an application for a licence under this section, a 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.

7.2. Proper Planning & Sustainable Development

- 7.2.1. The development is in accordance with national telecommunications policy as set out in the 'Planning Guidelines for Telecommunications Antennae & Support Structures' (1996); the National Broadband Plan (2012) – which was updated under Project Ireland 2040 and the East & Midlands Regional Spatial Economic Strategy, which promote a comprehensive network of telecommunications infrastructure throughout the country and linkages with Northern Ireland.

7.3. Development Plan Considerations

- 7.3.1. The site is not zoned in the current development plan for the area – being white land associated with adjacent roads. Therefore, there are no specific zoning objectives applying to it. The site is located immediately adjacent to a Protected Structure – Wigmore Lodge. The site does not intrude on the curtilage of the Protected Structure site. The controls cabinet is screened from view, from the curtilage of Wigmore Lodge, by a 1.75m high boundary wall. The 15m high signal pole is visible from the curtilage of Wigmore Lodge. However, the slenderness of the mast; the presence of semi-mature and mature trees within the curtilage of Wigmore Lodge; the presence of semi-mature trees just outside the Dunville Avenue boundary wall of Wigmore Lodge; and the existence of other street furniture in the area (particularly lamp-posts); results in the signal pole not being visually intrusive. The signal pole and controls cabinet will not have a detrimental effect on the setting of the Protected Structure; and will in no way detract from it.

7.4. Impact on Amenities of the Area

- 7.4.1. The comments made in the above section are of relevance in relation to visual impact on the wider area. The application is accompanied by Visual Impact Assessment – indicating the visual impact from 9 vantage points. Having regard to the fact that the signal pole has already been erected, the photographs which accompany this Inspector's Report will be of particular assistance to the Board in deciding on the visual impact of the development. The signal pole and controls cabinet are located at the back of the footpath; and so, do not hinder the passage of pedestrian traffic along this stretch of pavement. The signal pole and controls cabinet have been slotted into a line of semi-mature trees, timber benches, timber planter boxes, book boxes and a notice board on this part of Dunville Avenue, and

do not in any way assert themselves into the viewers line of vision. The development will not deter members of the community from using the benches or book boxes, and will not have any impact on the amenities of the area.

7.5. Justification and Need for Proposal

- 7.5.1. The applicant has stated that the signal pole will replace an existing communications structure at Garland House, Rathmines, for Three (DU0066) – located some 720m to the west of the site. Figure no. 6 of the Planning Statement submitted, indicates the location of Comreg sites in the vicinity of Dunville Avenue. Additional capacity is required to deal with communications traffic from residents, businesses and those passing through the area. Figures 4 & 5 of the Planning Statement show indoor coverage, both with and without the proposed development. The additional signal pole will greatly increase the area with ‘excellent’ indoor coverage in the vicinity of Dunville Avenue, Oakley Road and Moyne Road, amongst others. It is stated that no alternatives were available within the 250m search radius. Other Comreg sites in the area are too far away to be of use. It is stated that the applicant company specifically facilitates co-location within the communications sector. The company facilitates mobile-telephony, radio, broadband and emergency communications.

7.6. Road Safety

- 7.6.1. The erection of a signal pole and controls cabinet will not have any impact on the safety of road users or pedestrians – being located at the back of the footpath amongst other items of street furniture and landscaping. The signal pole and controls cabinet do not obstruct any road or footpath. The development will not obstruct sight visibility of motorists or pedestrians.

7.7. Exempted Development

- 7.7.1. Circular Letter PL 11/2020 relating to Telecommunications Services – Planning Exemptions and Section 254 Licences, was issued on 17th December 2020. It clarifies that a licence is required for overground electronic communications infrastructure and associated physical infrastructure, but that such works are exempt from planning permission. Whilst a licence is required for such works, section 254(7) further provides that development carried out in accordance with a licence issued under this section, shall be exempt development.

7.8. Other Issues

- 7.8.1. There is correspondence on the file in relation to street furniture in place when contractors arrived to begin construction. There is correspondence from the appellant objecting to the signal pole and controls cabinet, on grounds that the site notice was poorly placed – on a lamp-post rather than on the wall near the cabinet. Correspondence explains that the applicant attached the public notice to the lamp-post (photograph attached) because it was public property – the wall of Wigmore Lodge being private property. The correspondence indicates that the works for installation of the signal pole and controls cabinet commenced on 19th September 2022.
- 7.8.2. I note that Circular Letter PL 07/12 states that the attachment of conditions to permissions for telecommunication masts and antennae, which limit their life to a set temporary period, should cease. However, given that this appeal relates to a Section 254 licence application for development on public land, it is considered reasonable that the licence be granted for a specified duration, as provided for under section 254 (4) of the Planning and Development Act, 2000 (as amended). This will enable the planning authority to re-assess the suitability of the development at the end of the appropriate period, in light of any changed circumstances pertaining at that time. Condition 23 of the licence indicated that it was for a period of 5 years. In allowing the granting of the licence, the Board should attach a condition relating to a similar five-year period.
- 7.8.3. It would be appropriate to attach a condition to the licence restricting its use for advertising purposes – in the interest of visual amenity. Condition 7 of the licence issued by DCC addressed this issue.
- 7.8.4. The applicant correctly points out that health is not a planning consideration. The development will be erected within current health and safety legislation and guidelines. Comreg is the appropriate authority in this area. The equipment is designed to be in full compliance with the limits set by the Guidelines of the International Commission on Non-Ionising Radiation Protection.
- 7.8.5. Condition 25 requires that the developer keep the cabinet free of graffiti. This is a reasonable requirement; and should be repeated in any licence issued from the Board.

7.8.6. When this appeal was first received by the Board, on 21st September 2022, it was accompanied by an incorrect fee of €50, and so, was returned to the appellant (by letter dated 23rd September 2022). I note that the original Planning Appeal Form, at Item 9, had requested that an oral hearing be held. The appellant subsequently submitted the correct fee of €220 on 28th September 2022, when the appeal was accepted by the Board. The appeal did not include an additional €50, which would be fee required for an oral hearing request.

8.0 Recommendation

I recommend that the Board disallows the appeal and allows the licence, for the Reasons and Considerations set out below, and subject to the attached Conditions.

9.0 Reasons and Considerations

Having regard to the provisions of section 254 of the Planning and Development Act 2000, as amended, to national, regional and local policy objectives, as represented in the Dublin City Development Plan 2022-2028, to support the development of a sustainable telecommunications network throughout the city, to the Department of Environment, Heritage and Local Government section 28 Statutory Guidelines, “Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities”, 1996, as updated by circular letter PL 07/12 in 2012, and to the nature and scale of the development, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not detract from the setting of Wigmore Lodge (a Protected Structure), would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. 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 licence 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. This licence shall be valid for five years from the date of this Order. The telecommunications structure and related ancillary structures shall then be removed and the lands reinstated on removal of the telecommunications structure and ancillary structures unless, prior to the end of the period, continuance shall have been granted for their retention for a further period.

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. No additional dishes, antennae or other equipment, other than indicated on Drg. No. DU0066-105 Rev. A, received by the planning authority with the application, shall be attached to the pole or otherwise erected on the site, without first obtaining the written consent of the planning authority.

Reason: In the interest of visual amenity.

4. No advertisement or advertisement structure shall be erected or displayed on the proposed structure or within the curtilage of the site.

Reason: In the interest of the visual amenities of the area.

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.

**Michael Dillon,
Planning Inspectorate.**

17th April 2023