



An
Bord
Pleanála

Inspector's Report

ABP-314937-22

Development	S254 licence for 18m freestanding streetpole solution, equipment cabinets and associated site works
Location	Public grass verge along the R106 Road (Swords Road), Malahide, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	S254/05/22
Applicant(s)	Emerald Tower Limited
Type of Application	S.254 Licence
Planning Authority Decision	Refuse Licence
Type of Appeal	First Party
Appellant(s)	Emerald Tower Limited
Observer(s)	None
Date of Site Inspection	6 th March 2023
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The appeal site is on the southern side of Swords Road, between the towns of Malahide and Swords, in north County Dublin.
- 1.2. It includes a section of the grass verge which is situated between the public road and footpath. There is a further grass verge running alongside the path on its southern side which includes a dense strip of trees and concrete boundary wall. The wall forms the boundary to an adjacent residential housing estate called Chamley Park. Estuary Road is to the east of the site and runs on a north – south axis generally towards Seabury, which is a residential area.
- 1.3. The character of the area is mainly residential and the predominant form of housing is detached and semi-detached. Mature and semi-mature trees are widespread in the surrounding vicinity, particularly to the north and east of the site.
- 1.4. There are various types of street fixtures and infrastructure, including traffic lights, streetlights, utility poles with overhead powerlines and road signage.
- 1.5. The site is owned by Fingal County Council.

2.0 Proposed Development

- 2.1. The Applicant is seeking approval for a Section 254 Licence, comprising an 18m 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 each with a height of approximately 1.7m, width of 1.3m and depth of 0.8m. They are to be painted dark green.
- 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 was that having regard to the nature and height of the proposed communication infrastructure and its proximity to existing residential properties at a visible location on a busy road junction, it is considered that the proposed mast would result in a negative visual impact which would be contrary to the objectives of the Fingal Development Plan 2017-2023, in particular Objectives IT07 and IT08 and would be contrary to the proper planning and sustainable development of the area. In addition, the proposal would result in an unacceptable impact to the root protection areas of existing trees.

3.2. Planning Authority Reports

3.2.1. Planning Report

- The site is not zoned. The lands to the southwest across the public footpath are zoned Open Space where telecommunications structures are neither 'Permitted in Principle' or 'Not Permitted'. The proposal is therefore required to be considered on its merits.
- The proposed mast may benefit the area through improved mobile and wireless broadband service. However, other factors must also be considered.
- The prevailing character of the area is residential with relatively high quality and landscaped land with good quality tree cover. The proposed design is simple and contemporary. However, the mast at 18m would be considerably higher than any nearby structures or trees and would be visually obtrusive and negatively impact the visual amenities of the area. The provision of two additional cabinets would also add to the clutter in the area.
- The location of the structure on the grass verge with additional cabinets would negatively impact upon the existing trees. These trees are located directly to the east and west of the site and bordered by the public footpath and public road to the south and north of the verge, respectively. Therefore, the only

direction the root structures can strengthen and grow is towards the proposed development. The construction of this development would therefore impact on the root protection area of the existing trees.

- Recommend refusal of licence.

3.2.2. **Other Technical Reports**

Water Services Department: No objection.

Parks and Green Infrastructure Division: Concerns raised regarding the proximity of the proposed works, including direct conflict, with tree root protection areas and in relation to visual impact within a residential area.

4.0 **Policy Context**

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

- 4.1.1. 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.
- 4.1.2. 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.
- 4.1.3. 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.

4.1.4. 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.

4.1.5. 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.

4.2. **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.

4.3. **Circular Letter PL11/2020**

4.3.1. 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.

4.4. 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. There is a small strip of land, a further grass verge, to the south across the public footpath which is zoned Open Space.

The surrounding lands are mainly zoned RS – Residential.

There are specific objectives for a Road Proposal and Cycle Network Plan for the Swords Road.

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.*

4.5. Natural Heritage Designations

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

5.0 The Appeal

5.1. Grounds of Appeal

The main grounds of appeal can be summarised as follows:

- The development is required to improve network coverage in an area where there is currently limited service.

- The chosen site for the proposed development is excellent in that it would allow for the minimisation of visual and residential amenity impacts.
- The proposal to co-locate two different operators within the same pole reduces the need for two separate monopoles.
- The height of the structure (18m) is the lowest possible and has been driven by the requirement to achieve the desired level of coverage without being excessive.
- The proposal strikes a balance between environmental impact and operational considerations, and it is of a high quality and contemporary design.
- The Landscape and Visual Impact Assessment includes views from locations from where the proposed development would likely be visible. The recorded viewpoints have been assessed as having a negligible (one viewpoint) to medium (two viewpoints) magnitude of change and there would be no significant effects.
- The site is not subject to any sensitive designated areas under the Development Plan.
- The only part of the proposed development which could affect the nearby tree roots is the monopole structure, which has an 600mm wide foundation. The closest roots are a minimum of 4.5m away from the nearest trees and, therefore, outside the 4.2m root protection area, as determined by BS 5837.2012 'Trees in relation to Design, Demolition and Construction – Recommendations'.
- The proposed cabinets sit on a shallow pad foundation and would not affect any underground tree roots.
- The Applicant is willing to accept a condition as part of a permitted licence to undertake an Arborist survey, should the Board require this.

5.2. Planning Authority Response

- Having reviewed the grounds of appeal, the Planning Authority remains of the opinion that the proposed development is unacceptable in this location as it would negatively impact on the existing trees and character of the area.
- The Board is requested to uphold the Decision of the Planning Authority.

6.0 Assessment

The main planning considerations relevant to this appeal are:

- Visual and Residential Amenity
- Impact on Trees
- Appropriate Assessment

6.1. Visual and Residential Amenity

- 6.1.1. The first part of the Planning Authority's reason for refusal is due to the nature and height of the proposed communication infrastructure and its proximity to existing residential properties at a visible location on a busy road junction. The Planning Authority considers that the proposed development would result in a negative visual impact on the surrounding vicinity, which would be contrary to the objectives of the Fingal Development Plan 2017-2023.
- 6.1.2. I note that the current version of relevant statutory plan for the area is the Fingal Development Plan 2023-2029, which was made on 22nd February 2023 and came into effect on 5th April 2023. The Plan, under Objective IUO53, seeks to 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. Objective DMSO18 is also relevant as it requires 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.
- 6.1.3. During my physical inspection of the subject site and its surrounding area, I observed that the proposed telecommunications facility would likely result in a degree of visual

change being incurred by the local environment. This is largely due to the height of the proposed monopole, which is 18m. Section 4.3 of the 1996 Guidelines states that sites close to existing residential areas are particularly sensitive from a visual and residential amenity perspective. In this regard, I note that the character of the surrounding area is mostly residential housing. The closest residential development is Chamley Park, which is to the south of the subject site, on the far side of a tall concrete boundary wall and row of mature trees on public land. There are also some dwellings on the far side of the Swords Road, to the north, and Seabury, a large residential area, further north again. I note that no houses face directly towards the appeal site and that intervening street fixtures and trees would generally block most views of the proposed development, and particularly of the ground level equipment cabinets.

- 6.1.4. During the summer months, the vegetative screening provided by the trees would be denser and thicker as they would be in full leaf. However, the trees are large and have large and mature canopies, so even when not in full bloom they still reduce the potential for visual impact caused by the proposed development. I confirm that I undertook my site inspection at a time when the trees were devoid of foliage (March 2023), and still observed that their presence as an important contributing factor in impeding views, particularly longer distance views, of the proposed monopole and its ancillary works.
- 6.1.5. The Applicant has submitted a set of photomontages to aid in the visual assessment of the proposal. The booklet comprises 3 no. viewpoints, which are from various nearby and further afield locations. The viewpoints are from the west (Swords Road), the east (Swords Road) and north (Estuary Road). I note that Viewpoint 2 is taken almost directly behind a dense clump of vegetation (*leylandii* or similar) and have discounted the usefulness of this viewpoint for that reason. Viewpoints 1 and 3 show the proposed development in a more accurate light, in my opinion, and represent a valid visual depiction of how the monopole would appear from these locations.
- 6.1.6. I accept that the monopole would be more visible than many of the other existing structures in the vicinity, including overhead powerlines, lamp standards and road signage. However, I do not consider that it would not be so visually apparent, or have such a domineering appearance, that it would seriously injure the visual and

residential amenity of the receiving environment. This was observed during my physical inspection of the site, and its surrounds, and as illustrated in the plans and particulars accompanying the application (including the 'Overview Map' / Site Location Map, drwg. no. DN-2970-01-PD-01). The top section of the monopole would be visible from the east and west along the Swords Road. However, it would be generally screened from view from several other locations from the north and south, including from many of the surrounding residential streets and estates.

- 6.1.7. The proposed infrastructure would take up a relatively small area and many views towards it would be impeded and / or significantly diminished by the presence by several large and mature trees in the area, including those planted within the grass verge directly south of the site. It is my opinion that most longer distance views would only allow for the very top section of the streetpole to be seen, and in some cases, not at all.
- 6.1.8. In other locations, closer to the appeal site full visibility of the proposed development would be likely. However, I note that the 1996 Guidelines state that some masts will remain quite noticeable despite best precautions. The proposed monopole adopts a relatively slim appearance – it is 0.4m at its widest point – and, in my opinion, the Applicant has sought to minimise its potential visual impact by selecting a monopole of low to medium height. The 1996 Guidelines state that the height of telecoms support structures, when the requirements of the backbone network are taken into account, can range from 12m to 60m, although most typically will be between 20m and 40m. The proposed monopole is 18m.
- 6.1.9. I note that the Planning Authority raised concerns regarding the presence of the equipment cabinets at ground level in that they would add to the visual clutter in the area. However, the cabinets do not encroach into the footpath and are positioned within the grass verge between trees. They are of a modest size and scale with a height of roughly 1.7m, width of 1.3m and depth of 0.8m. To blend in with the grass verges, and surrounding trees, they are proposed to be painted dark green. There are no other similar types of infrastructure in proximity, including, for example, other types of cabinets, equipment kiosks or substations. Furthermore, I note that the purpose of having two cabinets to accommodate more than one operator and to share the monopole facility for multiple network providers is an approach supported by the national policy.

6.1.10. In conclusion, I consider that the proposed telecoms infrastructure would be an acceptable form of development from a visual impact and residential amenity perspective. I consider that it is in accordance with the provisions of the County Development Plan, including Objectives IUO53 and DMSO18, which are in relation to ensuring a high-quality design of masts and telecommunications infrastructure in the interests of visual amenity, and also national policy in relation to the rollout of a modern telecommunications network throughout the country.

6.2. Impact on Trees

6.2.1. The second part of the Planning Authority's reason for refusal is that the proposed development would result in an unacceptable impact to the root protection areas of existing trees. I note that these concerns are referenced in both the Planner's Report and by the Council's Parks and Green Infrastructure Division.

6.2.2. The proposed cabinets are to be placed on a shallow surface foundation, which would not involve deep excavation into the ground, or any type of extensive groundworks. I consider that the likelihood of the cabinets affecting the underground tree roots system, or root protection zones, is therefore unlikely to occur.

6.2.3. The proposed monopole structure would be set deeper below the ground surface, however. I acknowledge the proximity of the streetpole to some trees and accept that this could pose an issue for their health and longevity over time. I note that no tree survey, or arborist report, accompanies the application or appeal. However, the base foundation for the monopole is relatively confined and does not cover an expansive area as it is roughly 0.6m in width. Furthermore, it is setback roughly 4m to 4.5m from the nearest tree and does not appear to be within its drip zone. The drip zone is the physical area directly under the outer circumference of the branches of a tree and provides a rough indication of its critical root zone.

6.2.4. I further note that the Applicant is willing to accept a condition as part of a permitted licence to undertake an Arborist survey, should the Board consider this necessary. I recommend that such a condition should be attached as this would provide for the identification, and subsequent protection, of trees should they be negatively affected by the proposed development in any way.

6.2.5. The Board may also wish to attach a further condition requiring the developer to lodge a cash deposit, bond, or similar, with the Planning Authority to secure the protection of the trees adjacent the site and to make good any damage caused during the construction period. As the trees in the vicinity of the site, along the grass verge, are an important factor in recommending that a temporary licence be permitted – i.e., they would provide a good screening of the proposed development – I consider that such a condition would be appropriate and reasonable in this particular context.

6.3. Appropriate Assessment

6.3.1. Given the nature and scale of the development proposed, which is for a telecommunications monopole, equipment cabinets 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.

7.0 Recommendation

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

8.0 Reasons and Considerations

8.1.1. 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 seriously injure the visual or residential amenities of the area, or result in a significant negative visual

impact on the surrounding vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1.	<p>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.</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</p>

	<p>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>
5.	<p>a) An accurate tree survey of the site, which shall be carried out by an arborist or landscape architect, shall be submitted to the planning authority prior to commencement of development. The survey shall show the location of each tree on the site, together with the species, height, girth, crown spread and condition of each tree, distinguishing between those which it is proposed to be felled and those which it is proposed to be retained.</p> <p>b) Measures for the protection of those trees which it is proposed to be retained shall be submitted to, and agreed in writing with, the planning authority before any trees are felled.</p> <p>Reason: To facilitate the identification and subsequent protection of trees to be retained on the site, in the interest of visual amenity.</p>
6.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees adjacent the site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To secure the protection of the trees on the site.</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

6th July 2023