



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315156-22

<b>Development</b>	18m Streetpole Solution and ground equipment cabinet
<b>Location</b>	Public footpath at the junction of Sylvan Drive and Katherine Tynan Road (R838), Kilnamanagh, adjacent to Kingswood LUAS stop, Dublin 24
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	S25422/08
<b>Applicant(s)</b>	Signal Infrastructure Ltd.
<b>Type of Application</b>	Section 254 Licence
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Bridget Smyth
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	6 <sup>th</sup> March 2023
<b>Inspector</b>	Ian Boyle

## **1.0 Site Location and Description**

- 1.1. The appeal site is located on the corner between Sylvan Drive and Katherine Tynan Road (R838) in Kilnamanagh, Dublin 24. It comprises a relatively wide section of public path. The Kingswood LUAS stop is roughly 20m to the east.
- 1.2. Katherine Tynan Road runs in an east - west direction generally and connects to the M50 Motorway, approximately 400m to the east. There is a green space to the rear of the site on its northern side. Mature trees are widespread in the surrounding vicinity, particularly along Auburn Avenue.
- 1.3. There are tall lamp standards, overhead powerlines, power cables and support cables associated with the LUAS and road signage in both the immediate and wider surrounding vicinity.
- 1.4. The surrounding area comprises mainly residential development in the form of terrace, semi-detached and detached houses.

## **2.0 Proposed Development**

- 2.1. The Applicant is seeking approval for a section 254 Licence, comprising an 18m high multi-operator telecommunications monopole together with antenna, internal cabling, dish, and ancillary cabinet and operating works.
- 2.2. The monopole would be 0.4m at its widest point, which is at the top, where the antenna is housed.
- 2.3. The ground level cabinet would be approximately 1.9m wide, 1.7m high and 0.8m deep.
- 2.4. The purpose of the proposed infrastructure is to provide improved, high quality network coverage for the surrounding area.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority granted the licence on 29<sup>th</sup> November 2022, subject to 18 no. standard conditions.

Condition No. 2 limits the licence to three years.

Condition No. 9 is in relation to setback distance from underground services and public utilities.

Condition No. 16 requires the preparation of a Construction Traffic Management Plan.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report**

- The site is not zoned. It is located on the public footpath.
- The application is accompanied by a Planning Statement and Visual Impact Assessment, which is in accordance with Section 12.11.2 of the Development Plan ('Information and Communications Technology').
- The appeal site is not ideal given the impact on the footpath and bicycle parking area. However, it is not clear that other locations within the search area identified in the Applicant's Planning Statement would be better suited and serviceable. The footpath is a busy north-south link and important pedestrian connection.
- A temporary licence is acceptable at this location. However, other locations in the local area should be investigated by the Applicant prior to the renewal of the licence. This can be achieved by condition.
- It is accepted that alternative options in the immediate area are limited due to the presence of underground services.
- In summary, the proposed development is in accordance with the relevant policies in the South Dublin County Development Plan 2022 – 2028 and the proper planning and sustainable development of the area.

### 3.2.2. **Other Technical Reports**

Roads Department: Requested further information including details on the dimensions of the operator's cabinets, and to have the structures moved closer to the adjacent bicycle parking area, away from the footpath, so as to minimise impact on pedestrians.

## 4.0 **Policy Context**

### 4.1. **Guidelines for Planning Authorities on Telecommunications Antennae and Support Structures (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 are 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, and if the alternatives are either unavailable or unsuitable, should free-standing masts be located in a residential area. 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. The proposed structure should be kept to the minimum height consistent with effective operation and should be monopole (or poles) rather than a latticed tripod or square structure.
- 4.1.3. The Guidelines also state that visual impact is among the more important considerations which should be considered in arriving at a decision for a particular application. In most cases, the Applicant will only have limited flexibility as regards selecting a 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, local factors must 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.

### 4.4. **Other National and Regional Policy**

- Project Ireland 2040 – The National Planning Framework (NPF), 2018
- Guidance on the Potential Location of Overground Telecommunications Infrastructure on Public Roads, 2015
- The East and Midlands Regional Spatial Economic Strategy (RSES), 2019

### 4.5. **South Dublin County Council Development Plan 2022 – 2028**

#### **Zoning**

The site is unzoned. It is on a section of public footpath.

## **Chapter 5 ‘Quality Design and Healthy Placemaking Policy’**

### QDP2: Overarching - Successful and Sustainable Neighbourhoods

*‘Promote the creation of successful and sustainable neighbourhoods through the application of the eight key design principles to ensure the delivery of attractive, connected, and well-functioning places to live, work, visit, socialise and invest in throughout the County.’*

#### QDP2 Objective 1

*‘To ensure that applications for new development are accompanied by a statement from a suitably qualified person detailing how ‘The Plan Approach’ has been taken into consideration and incorporated into the design of the development including the materials and finishes proposed and demonstrating how the overarching principles for the achievement of successful and sustainable neighbourhoods have been integrated as part of the design proposal.’*

## **Chapter 11 Infrastructure and Environmental Services**

### Section 11.4 Information and Communications Technology Policy

#### Policy IE5

*Information and Communications Technology (ICT) Promote and facilitate the sustainable development of a high-quality ICT network throughout the County in order to achieve social and economic development, whilst protecting the amenities of urban and rural areas.*

#### IE5 Objective 1

*To promote and facilitate the provision of appropriate telecommunications infrastructure, including broadband connectivity and other innovative and advancing technologies within the County in a non-intrusive manner.*

#### IE5 Objective 3

*To permit telecommunications antennae and support infrastructure throughout the County, subject to high quality design, the protection of sensitive landscapes and visual amenity.*

#### IE5 Objective 4

*To discourage a proliferation of telecommunication masts in the County and promote and facilitate the sharing of facilities.*

#### IE5 Objective 5

*To ensure that above ground utility boxes are sensitively located and finished to reduce their visual impact, designing out anti-social behaviour and promoting soft planting around existing and new ones where feasible.*

#### IE5 Objective 6

*To require the identification of adjacent Public Rights of Way and established walking routes by applicants prior to any new telecommunication developments and to prohibit telecommunications developments that impinge thereon or on recreational amenities, public access to the countryside or the natural environment.*

#### IE5 Objective 7

*Ensure that applications made in relation to the provision of overground telecommunications infrastructure, including planning applications and Section 254 licence applications, take into consideration and demonstrate compliance with the 'Guidance on the Potential Location of Overground Telecommunications Infrastructure on Public Roads' (2015).*

## **4.6. Natural Heritage Designations**

There are no designated European sites within the vicinity of the site.

## **5.0 The Appeal**

### **5.1. Grounds of Appeal**

- The appeal site is part of a LUAS Stop platform and does not form part of the public footpath. The land is not owned by the Council. Therefore, it does not qualify for a section 254 Licence application.



- It would be impossible to carry out the required construction works at such a busy junction without causing significant disruption to traffic, pedestrians, the LUAS, and others.
- The Applicant has not consulted with TII (Transport Infrastructure Ireland) or the LUAS operators.
- It was not possible to make an earlier observation to the Planning Authority. This is unfair. The section 254 process means the public can only lodge an appeal to An Bord Pleanála.
- The Manager's Order and Decision (Condition 1) incorrectly refers to 'Hayden's Lane'.
- The proposed development is expensive and a waste of resources as the licence is only for a three-year period. The works would need to be dismantled after this period. A more permanent solution at a shopping centre, industrial park or public park would be more appropriate. For example, at Cookstown Industrial Estate or Ballymount Industrial Estate.
- There is already a mast operating nearby but this is required to be moved 'because of other circumstances'. The Planning Authority could allow this other mast to remain in situ until 2023/2024 rather than grant a new licence for the subject development.

## 5.2. Applicant Response

- The Planning Authority issued a section 146A amending Order on 8<sup>th</sup> November 2022 to rectify the wording of Condition 1. The issue was a clerical error relating to the description of the location of the subject site.
- The Planner's Report describes the subject site as a public footpath and considers it to be on the public road as per the relevant legislation. The lands are fully owned by South Dublin County Council (SDCC) (see attached folio mapping). The site is under the charge of Transport Infrastructure Ireland (TII), but this does not alter ownership of the site or the Local Authority's ability to licence telecommunications structures on it.

- The location meets the definition of a ‘public road’ as per the meaning of the Roads Act.
- The rights of TII in respect of the subject site remain subject to agreement with SDCC as the road authority. SDCC are responsible for maintaining the public footpath, which remains part of the public road.
- SDCC is the road authority for the area. Therefore, consultation with TII was not required prior to granting the licence. However, the Applicant is also required to obtain a Road Opening Licence (ROL) and has had prior engagement with SDCC in this regard. SDCC has confirmed that consultation with Transdev is a requirement of the ROL to ensure the ordered management of the development.
- The Applicant has followed the licence application process. There is no formal planning requirement for public consultation to occur for what is a utility installation.
- The legislation provides an opportunity for any third party to appeal the installation to An Bord Pleanála at any stage, which is logical given the differences between the permanence of a grant of permission and temporary licence.
- In the event a future application is made to renew the licence upon expiry, the monopole would be removed from its current location and reused / recycled for use at an alternative site.
- Both Cookstown Industrial Estate and Ballymount Industrial Estate are roughly 1km from Sylvan Drive and currently accommodate existing telecommunications infrastructure whose services cannot be adequately extended to reach the subject blackspot.
- The existing street pole on Sylvan Drive is currently pending the outcome of a judicial review. The Applicant intends to replace this streetpole pending the outcome of the current appeal.

### 5.3. **Planning Authority Response**

- The Planning Authority confirms its Decision. The issues raised in the appeal are covered in the Planner's Report.

## 6.0 **Assessment**

The main planning considerations relevant to this appeal case are:

- Location and Site Ownership
- Environmental Impact
- Procedural Issues
- Appropriate Assessment

### 6.1. **Location and Site Ownership**

- 6.1.1. The Applicant (Cignal Infrastructure Ltd) is an infrastructure provider for the telecommunications industry. They have multiple sites and telecoms facilities around the country which support mobile and broadband infrastructure.
- 6.1.2. The proposed development is for a section 254 Licence, comprising an 18m high multi-operator telecommunications monopole together with antenna, internal cabling, dish, ancillary ground-level cabinet and operating works.
- 6.1.3. The appeal site is in an area where there is currently a blackspot for mobile and wireless broadband. The purpose of the proposed infrastructure is to provide improved, high quality network coverage and to address the poor signal strength that exists in the surrounding vicinity at present.
- 6.1.4. The Appellant submits that the site is part of a LUAS Stop platform and does not form part of the public footpath. They state that it should not qualify as a type of development that can benefit from applying for a section 254 licence for this reason.
- 6.1.5. The definition of 'public road' is an important consideration, in my opinion, in determining whether a section 254 licence is the appropriate mechanism to facilitate the development proposed. Section 2 of the Planning & Development Act, 2000 (as amended) states that 'public road' has the same meaning as in the Roads Act, 1993.

Section 2 of the Roads Act, 1993 (as amended) defines a public road as 'a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority'. Section 2(a) of the Roads Act states that a 'road' includes 'any street, lane, footpath, square, court, alley or passage'. A footpath is defined by the Roads Act 'as a road over which there is a public right of way for pedestrians only, not being a footway'.

- 6.1.6. I am satisfied that the subject site meets the above criteria for a section 254 licence as there is a public right of way over the subject site and the section of pavement within the red line boundary forms part of the public footpath network for the area. Furthermore, the site is not zoned; and I note that the Development Plan typically does not zone public roads or footpaths. Having regard to the relevant legislation and the information set out in both the third party grounds of appeal and Applicant's response, I consider that a section 254 licence application is the correct mechanism by which to carry out the proposed development. I note also that the Planner's Report confirms that the subject site is on the public footpath and therefore part of the public road, as per the legislation.
- 6.1.7. In terms of the third party concerns raised in relation to the ownership of the site, I note that the site is legally owned by South Dublin County Council. This is confirmed by way of the copy of folio and related maps attached to the Applicant's response (ref. 710065F). Part 2 of the document 'Ownership' confirms that the land is owned by the County Council.
- 6.1.8. I refer also to the letter appended to the rear of the Applicant's response which is from the Council's Roads Maintenance, Land Use, Planning and Transportation Section (dated 28<sup>th</sup> July 2022). The letter states that the subject site, which is shaded in green on the relevant map, is in charge of Transport Infrastructure Ireland (TII). However, while TII may have assumed certain responsibilities for the operation and maintenance of the public road and LUAS line, the legal ownership of the site lies with South Dublin County Council (SDCC).
- 6.1.9. In summary, and as the land is owned by the Council, the Applicant is entitled to make the section 254 Licence application.

## 6.2. Environmental Impact

- 6.2.1. The Appellant raises several concerns in relation to the potential environmental impacts that may be caused by the proposed development. They submit that the telecoms equipment in this location would be a waste of resources as the licence is only for a three-year period and that it would need to be dismantled afterwards. A more permanent solution at a shopping centre, industrial park or public park would be more appropriate.
- 6.2.2. The proposed development is seeking a temporary duration of licence for a period of three years. Assuming the temporary licence is permitted, and after the licence period expires, the Applicant is entitled to apply for a further (new) licence for an additional period of time. Therefore, the proposed monopole could potentially remain in situ for more than three years and thus avoid needing to be taken down.
- 6.2.3. Furthermore, I understand that the industry provides for the movement of such telecoms equipment from one location to another and, in a situation where a further extension of the licence is refused, the Applicant could choose to reuse and redeploy the streetpole and its associated equipment to an alternative location. Therefore, the infrastructure would not necessarily be made redundant, or required to be disposed of, as it could be used to address another telecoms blackspot in a different setting.
- 6.2.4. I acknowledge that the Telecommunication Guidelines and Planning Circular PL07/12 encourages co-locating antennae on existing support structures and requires documentary evidence of the non-availability of this option for proposals for new structures. It also states that the shared use of existing structures will be required where there is an excessive concentration of masts located in a single area. 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 this is possible.
- 6.2.5. The Applicant has addressed this as part of the application documentation submitted. A total of five alternative sites within the 250m diameter search were identified as part of their research and it was demonstrated that whilst such locations had been duly considered, none were suitable for various reasons, including that they were too far removed from the search area to offer a viable solution. I note that both Cookstown Industrial Estate and Ballymount Industrial Estate are roughly 1km

from the appeal site. [The search ring is the area within which a telecommunications service support structure should be located in order to meet engineering requirements and improve network coverage taking into account factors such as topography and the demographics of the required service area.]

- 6.2.6. Having reviewed the information contained within the application and the existing coverage information that is available on the ComReg website, I am satisfied that alternative sites have been duly considered by the Applicant, that the proposal is justified, and that it would help to improve the existing 3G and 4G service coverage for the area.
- 6.2.7. I consider that the Applicant has provided adequate technical justification showing that there are service deficiencies in the area, which would be resolved by the proposed development. The proposal is consistent with Development Plan Policy IE5 in relation to information and communications technology, and the 1996 Guidelines, which require co-location of antennae on existing support structures, but that where this is not feasible to submit evidence of the non-availability of this option.

### 6.3. **Procedural Issues**

#### *Application Process*

- 6.3.1. The Appellant raises a concern that there is no opportunity for members of the public to make a formal observation to the Planning Authority and that the section 254 process means third parties can only lodge an appeal directly with An Bord Pleanála.
- 6.3.2. I consider that the licence application process has been correctly followed. Within this process there is no formal planning requirement for the Planning Authority to undertake public consultation. The legislation permits a third party to appeal the proposed temporary licence to An Bord Pleanála, at any stage, however, and this is what has occurred.
- 6.3.3. I am satisfied that the Applicant has followed the correct planning procedure and that this did not prevent the concerned party from making representations.

#### *Consultation*

- 6.3.4. The Appellant states in their grounds of appeal that the Applicant did not consult with TII, or the LUAS operators, prior to submitting the licence application to the Planning

Authority. However, there is no such requirement under planning legislation for such consultations to occur as part of a section 254 licence application process.

- 6.3.5. I also note that the Applicant has stated in their response that as part of the Road Opening Licence process they have had prior engagement with the Planning Authority. SDCC has confirmed that consultation with Transdev Ireland – as the operator of the LUAS – is a requirement of the ROL to ensure the orderly management of the development.
- 6.3.6. I am satisfied that such consultations can take place outside the planning process and that potential future disruptions to traffic, pedestrians and/or LUAS operations caused by the proposed development could be addressed as part of the ROL. I would also note however that the legislation allows for the licence to be rescinded by the Council 'where in the opinion of the planning authority by reason of the increase or alteration of traffic on the road or of the widening of the road or of any improvement of or relating to the road, the appliance, apparatus or structure causes an obstruction or becomes dangerous, the authority may by notice in writing withdraw the licence and require the licensee to remove the appliance, apparatus or structure at his or her own expense'. This option is available to South Dublin County Council and could readily be invoked in a situation where any the future planned road or light rail improvements are implemented.

#### *Manager's Order and Decision*

- 6.3.7. The original copy of the Manager's Order and Decision (Condition 1) incorrectly referred to 'Hayden's Lane'.
- 6.3.8. I note that the Planning Authority issued a section 146A amending Order on 8<sup>th</sup> November 2022 rectifying the wording of Condition 1. In my opinion, this does not alter the intention of the condition. I am satisfied that the issue was a clerical error relating to the description of the location of the subject site.
- 6.3.9. I also do not consider that this error had had any material effect on the Planner's overall assessment of the proposed development.

#### 6.4. **Appropriate Assessment**

Given the nature and scale of the development proposed, which is for a telecommunications support structure, equipment cabinet, and ancillary works, and the 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**

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

#### 8.0 **Reasons and Considerations**

Having regard to the provisions of section 254 of the Planning & Development Act, 2000 (as amended), the South Dublin County Development Plan 2022 - 2028, 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 be visually intrusive or seriously injurious to the visual or residential amenity of the area, or of properties in the vicinity, and would be in accordance with the proper planning and sustainable development of the area.

#### 9.0 **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
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	<p>out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The license shall be valid for three years from the date of this order. The telecommunications structure and related ancillary structures including any access arrangements shall then be removed and the site lands shall be reinstated on removal of the telecommunications structure and ancillary structures unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.</p> <p><b>Reason:</b> 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, ancillary structures and fencing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of the visual amenities of the area.</p>
4.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, off-site disposal of construction/demolition waste and the proposed parking/set down location for maintenance crews.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
5.	<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><b>Reason:</b> In the interest of public safety.</p>

6.	<p>In the event of obsolescence, or withdrawal or expiry of the license without renewal, the telecommunications pole and associated cabinet shall be removed from the site and the site reinstated at the expense of the applicant or licensee as per the following, unless otherwise agreed with the Planning Authority.</p> <p><b>Reason:</b> To protect the amenities of the area.</p>
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[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.]

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Ian Boyle  
Senior Planning Inspector

5<sup>th</sup> April 2023