



An
Bord
Pleanála

Inspector's Report

ABP-315370-22

Development	Construction of telecommunications mast and all associated site works
Location	Bayside Shopping Centre, Bayside Square East, Sutton, Dublin 13
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F22A/0418
Applicant(s)	Vantage Towers Limited
Type of Application	Permission (s. 34)
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party (s. 37)
Appellant(s)	Vantage Towers Limited
Observer(s)	None
Date of Site Inspection	26 th April 2023
Inspector	Philip Maguire

1.0 Site Location and Description

- 1.1. The appeal site is located in Bayside Square, at the heart of a residential between Sutton and Kilbarrack, in Dublin 13. Bayside Dart Station lies c. 400m northeast of the appeal site with Sutton Cross c. 2km east. The surrounding area is characterised by two-storey houses bounded by the R104 (Kilbarrack Road) to the west, R105 (Dublin Road) to the south, R809 (Baldoyle Road) to the east, and the railway line to the north.
- 1.2. The appeal site has a stated area of 0.0683ha. It consists of the flat roof of the recently redeveloped Bayside Shopping Centre, a 4-storey building with set-back upper levels. The building is occupied by a mix of commercial and residential uses. It has a large surface car park to the front. The Church of the Resurrection lies to the north of the car park. The road network around Bayside Square includes numerous mature trees.

2.0 Proposed Development

- 2.1. Planning permission is sought for telecommunications infrastructure consisting of 6 no. antennas, 1 no. microwave dish and associated equipment on the building rooftop.
- 2.2. The antennas would be installed in pairs on ballast mounts at 3 no. locations and within a radio friendly shroud designed to give a chimney/vent appearance. The shrouds have a footprint of roughly 0.80m by 0.80m and height of c. 2.60m above parapet level, illustrated as 17.60mAGL. The dish would be 300mm in diameter. The operator's cabinet is 0.880m wide, 2.050m high and 0.780m deep and would be mounted on steelwork located adjacent to the lift shaft overrun and enclosed with a handrail.
- 2.3. Exclusion zone barriers are proposed around the 3 no. locations, with non-slip matting assisting with maintenance access. Additional structures include 1 no. GPS antenna and 6 no. remote radio units. The proposal will also involve the relocation of some existing solar panels. Handrails are also proposed around 4 no. existing skylights.
- 2.4. Additional drawings were submitted as part of the appeal. They include a viewpoint location map and suite of photomontages from 3 no. viewpoints. The drawings are identical to those lodged with the Planning Authority in response to a further information request and do not alter the proposal before the Board.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to refuse permission for the proposed development on 1st December 2022 for the following reason:

1. *The proposed development as a standalone development or in conjunction with the other applications on the site would result in a proliferation of such structures in an obtrusive and incongruous way, contrary to the Local Objective 111 which requires new developments to be integrated with the existing residential character and scale for the area. Having regard to the nature and height of the proposed communication infrastructure and its proximity to existing residential properties at a visible location, the proposed telecommunication equipment would result in a negative visual impact which would be detrimental to the visual amenities of the area, would be contrary to 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.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planning Report (27/09/22): In terms of principle, it notes the zoning where telecoms structures are permissible and also references the general exemption under Schedule 2, Part 1, Class 31(k) of the Planning Regulations, albeit restricted by Condition 13 of PA ref. F15A/0436 in this instance. It notes that co-location at alternative sites was discounted but refers to a concurrent application on the same site (PA ref. F22A/0447) and suggests that permitting both applications would lead to a proliferation of telecoms structures and equipment on the subject building, contrary to Local Objective 111 which seeks all developments be integrated with the existing residential character. In this regard, it recommended that the applicant aims to reduce the number of telecoms structures through discussions with the applicant under PA ref. F22A/0447. In terms of visual and residential amenity impacts, it notes the policy basis under objectives IT07 and IT08 and the lack of visual impact assessment with the application documentation. It recommends that

a visual impact statement together with CGI's from various viewpoints around Bayside Square be submitted. Further Information was sought on this basis.

- Planning Report (01/12/22): Basis for the Planning Authority decision. It notes two other concurrent applications on the subject site (PA refs. F22A/0447 and F22A/0577) and their respective heights of 2.62m and 2.985m above parapet level. It refutes the applicant's contention that 9 no. shrouds on the rooftop of an apartment building in Rathgar, Dublin 6 as precedent, noting that it was dealt with under a single application (PA ref. 2748/20) with uniform design. It considers the proposal would result in the proliferation of telecoms structures on the subject building. In terms of visual impact, it notes that the cabinet and shrouds are clearly visible from all views and whilst the non-conventional design approach is commended, it considers the proposal as standalone or in conjunction with the concurrent applications will result in an obtrusive and incongruous form of development contrary to Local Objective 111. On this basis it concludes that proposal is not acceptable and would contribute to an unacceptable precedent.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

4.1.1. Appeal site:

PA ref. F22A/0447: Permission **refused** in December 2022 for roof-mounted telecoms equipment etc. on visual amenity grounds in the same terms outlined above. The decision is currently on appeal under **ABP-315571-23**.

PA ref. F22A/0577: Permission **refused** in December 2022 for roof-mounted telecoms equipment etc. on visual amenity grounds in the same terms outlined above. The decision is currently on appeal under **ABP-315533-23**.

4.1.2. Bayside Shopping Centre has an extensive planning history. The parent permission and most recent amendments are outlined below:

PA ref. F15A/0436: Permission **granted** in March 2016 for the redevelopment of an existing retail/commercial unit and 3 no. duplex units (total demolition 2,581sqm) and construction of a mixed-use development (7,573sqm) ranging from 1 to 3 storeys and comprising a convenience food store, 1 no. retail unit, offices, medical centre, gym, crèche, restaurant, takeaway, café, 8 no. apartments and associated works including public plaza, carparking etc. The proposal included the retention of a small retail space (701sqm) and storage at ground floor and 4 no. duplex units on 1st and 2nd floor. Condition of note:

Condition 13 No additional roof plant or equipment including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment shall be permitted except by way of a separate planning permission.

PA ref. F22A/0546: Permission **granted** in May 2023 for retention and alterations to previously permitted development under PA ref. F15A/0436, as amended under PA refs. F16A/0433; F16A/0565; F18A/0425; F19A/0255; F19A/0628; F20A/0116; F20A/0244; F20A/0542; F20A/0662 (ABP-311393-21); F22A/0214; and F22A/0303, including minor alterations to all previously permitted elevations; reduction to first floor communal roof garden; increase in Retail Unit 1 with reduction to the outdoor play area; omission of green walls; omission of 2 no. car parking spaces and the omission of trees/landscaping from carpark walkway etc.

5.0 Policy Context

5.1. Fingal Development Plan 2023-2029

5.1.1. The current Development Plan came into effect on 5th April 2023. The Planning Authority decision of 1st December 2022 was made under the previous Plan for the period 2017-2023. This appeal shall be determined under the current Plan.

5.1.2. The appeal site is zoned 'LC' Local Centre with an objective to *'Protect, provide for and/or improve local centre facilities'*. 'Telecommunications structures' are amongst the uses permitted in principle in this zoning.

5.1.3. The main policies and objectives relevant to the proposal are set out under Chapter 11 (Infrastructure and Utilities) and Chapter 14 (Development Management Standards) of the Written Statement.

5.1.4. The following sections are relevant to the issues raised in this appeal:

- 11.8.1 – National Broadband Plan
- 11.8.4 – Telecommunications
- 11.8.5 – Ducting and Access to Fingal County Council Assets
- 14.4.9 – Utility Facilities
- 14.20.9 – Information and Communication Technology
- 14.20.11.1 – Utility Facilities

5.1.5. I consider the following are particularly relevant:

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

Objective 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.

Objective 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.

Objective DMSO18 and

Objective DMSO228 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.

5.2. Telecommunications Guidelines

- 5.2.1. The Telecommunications Antennae and Support Structures Guidelines for Planning Authorities (DELG, July 1996) aims to provide technical information in relation to the installation of base stations and other telecoms equipment and offer general guidance so that the environmental impact is minimised, and a consistent approach adopted.
- 5.2.2. Section 4.3 of the Guidelines refers to visual impact and notes that only as a last resort, and if the alternatives are either unavailable or unsuitable, should free-standing masts be located in residential areas or beside schools. 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. It also notes that the proposed structure should be kept to the minimum height consistent with effective operation and possibilities offered by some commercial or retail areas should be explored whether as rooftop locations or by way of locating “disguised” masts.
- 5.2.3. Section 4.5 of the Guidelines states the sharing of antennae support structures will normally reduce the visual impact on the landscape and places an onus on the operators to demonstrate that they have made a reasonable effort to share. It notes that where it is not possible to share a support structure, the sharing of sites or adjacent sites should be encouraged so that masts and antennae may be clustered. It states that the use of the same structure or building by competing operators in urban or suburban areas will almost always improve the situation.

5.3. Circular Letter

- 5.3.1. Circular Letter PL 07/12 (DECLG, October 2012) revised elements of the Telecoms Guidelines. Section 2.2 advises that only in exceptional circumstances, where particular site or environmental conditions apply, should a permission issue with conditions limiting its life. Section 2.3 advises that planning authorities should avoid

including minimum separation distances between masts or schools and houses in their Development Plans. Section 2.4 advises that future permissions should simply include a condition stating that when the structure is no longer required it should be demolished, removed and the site re-instated at the operators' expense, as opposed to conditioning a security bond in respect of removal. Section 2.6 reiterates the advice in the Guidelines in that planning authorities should not include monitoring arrangements as part of planning conditions nor determine planning applications on health grounds. These are regulated by other codes and such matters should not be additionally regulated by the planning process.

5.4. Natural Heritage Designations

North Bull Island SPA (004006) 0.40km

North Dublin Bay SAC (000206) 0.40km

5.5. EIA Screening

- 5.5.1. The proposed development is not a class of development set out in Schedule 5, Part 1 or Part 2 of the Planning and Development Regulation 2001 (as amended) and therefore no preliminary examination is required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A 1st Party appeal has been lodged by Charterhouse Infrastructure Consultants on behalf of the applicant, Vantage Tower Limited.
- 6.1.2. The main grounds of appeal can be summarised as follows:
- The applicant suggests that the grounds of appeal are provided for under s. 37(2)(b)(iii) of the Planning Act and that permission should be granted having regard to the RSES, s. 28 Guidelines, Government policy etc.
 - The applicant disagrees that the proposal would result in a proliferation of such structures in an incongruous way; or would be contrary to objectives IT07 and IT08, and Local Objective 111; or would result in a negative visual impact detrimental to

the visual amenities of the area; or would be contrary to the proper planning and sustainable development of the area.

- The applicant provides a technical justification for the proposal stating the surrounding area is weak for the subject operator's 4G and 5G services ('Vodafone'), and includes extracts from the ComReg interactive maps.
- The applicant submits details of 5 no. ComReg sites within proximity of the appeal site and notes that the operator is already co-located at 4 no. of these sites. It is suggested that the appeal site is necessary to complete coverage for voice and data services in the Bayside area.
- It is submitted that the proposed installation meets the zoning requirements, vision, aims and objectives of the Development Plan, including objectives IT07 and IT08.
- The applicant outlines alternative solutions including monopole and lattice masts, and concludes that the mostly likely alternative would be a 30m high monopole. It is stated that the better option, through its design and discreet appearance, is the rooftop installation in compliance with IT07 and IT08, and Local Objective 111.
- It is suggested that the proposal accords with section 4.3 of the Telecoms Guidelines and that the installation will form part of the overall buildings, will not be seriously detrimental to views or intrude overly on the general view, and the design ensures that the installation is adapted for the specific location.
- Referencing the submitted photomontages, the applicant states that the proposal would have an acceptable impact on the character and setting; and would not adversely impact the visual amenities of the area, having particular regard to the alternative monopole. Separately in the submission, again referencing the photomontages, it notes that whilst there will be some impact, it is not unduly negative and given that there are other applications, the design and materials will be coordinated and managed by an independent party acting for the landowner.
- Cumulative impacts with the concurrent applications are also considered and the applicant suggests that they would collectively comply with the Development Plan and Telecoms Planning Guidelines, referencing a similar proposal in Rathgar, Dublin 6 (PA ref. 2748/20), with any views being intermittent. It also states that all three applications are being collectively managed, and this will ensure consistent

design and maintenance of the shrouded element which will match the existing cladding on the building. A letter from the management agent is provided.

- The applicant suggests that clustering with concurrent applications is encouraged by the Telecoms Guidelines and is not a proliferation of such structures in an incongruous way. Moreover, it avoids the need for a 30m high monopole.
- It is submitted that the proposal would comply with Schedule 2, Part 1, Class 31(k) of the Planning Regulations except that the building contains some apartments and is restricted by virtue of Condition 13 of PA ref. F15A/0436.
- The applicant notes that all operators have an obligation to provide coverage and the current coverage disparity will be exacerbated as 3G layers for two operators are switched off in 2023 and 2024.
- It is submitted that the proposal shall integrate into its surroundings and the skyline together with the other manmade and natural objects to become a generally unnoticed feature save for the positive service provision it will facilitate.
- It is suggested that the proposal does not impact on any vulnerable features or special amenities and is removed from protected sites and monuments and there will be no obstruction or degradation of views towards visually vulnerable features or significant alterations to the appearance or character of sensitive areas.
- It is therefore submitted that the refusal was incorrect on the grounds given having regard to the imbalance of telecoms services in the area and requests the Board to overturn the decision.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- Permitting this application would set a precedent for other similar developments in the area.
- Permitting the proposed development as a standalone development or in conjunction with the other two applications would result in the proliferation of telecoms structures on the subject building and present an inconsistent

appearance due to the number and varying height of the proposed structures and their location and visibility with neighbouring houses.

- Provision should be made for a financial contribution should the appeal be allowed.

7.0 Assessment

7.1. Preliminary Points

- 7.1.1. The Planning Authority's sole refusal reason relates to an adverse impact on visual amenities due to the nature and height of the proposal and its proximity to residential properties. This, they suggest, would be contrary to Objectives IT07 and IT08 of the Fingal Development Plan 2017-2023 relating to best practice in siting and design, and high-quality design in the interests of visual amenity and protection of sensitive landscapes, respectively. The current Development Plan came into effect on 5th April 2023 and a similar policy approach is reflected in Objective IUO53, as cited above.
- 7.1.2. The refusal reason also states that the proposal would be contrary to Local Objective 111 on the basis that as a standalone development or in conjunction with the other applications on the site, it would result in a proliferation of such structures in an obtrusive and incongruous way. This local objective sought to *inter alia* ensure that development integrates with the existing residential character etc. but has not been carried forward into the current Development Plan for the period 2023-2029.
- 7.1.3. These objectives outline a general approach to telecoms and local development and the Planning Authority has not suggested any material contravention of the Development Plan, notwithstanding the applicant's reference to s. 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended) in their appeal submission. The Board should not, therefore, consider itself constrained by s. 37(2) of the Planning Act.
- 7.1.4. Having examined the application details and all other documentation on the appeal file, including the appeal submission, and inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal. The issues can be addressed under the following headings:
- Visual Amenity
 - Appropriate Assessment

7.2. Visual Amenity

- 7.2.1. In terms of siting, ComReg's interactive mapping system indicates that 4G coverage in the area is 'good' for the subject service provider ('Vodafone'), although I note that there are pockets to the south and east of the appeal site where coverage is 'fair' and drop-outs are possible. I also note that 4G coverage for other providers is 'fair' to the east and west of the site, and on balance, I accept that there is a need for improved mobile and wireless broadband coverage in this area across a number of service providers. This is submitted as justification for the proposed development and overall, I accept that local and national policy seeks to support and encourage new telecoms infrastructure in such circumstances. I also note that the appeal site is not located in a sensitive location with reference to architectural or built heritage designations and critical views would be generally limited and absorbed with the receiving environment.
- 7.2.2. In terms of design, the applicant justifies the proposed height on the basis of ensuring 360° coverage within or close to the area of demand. This presumably requires obstacle clearance over the adjoining environment which is characterised by two-storey houses and mature trees with taller structures, including another 4-storey block and church spire, in the immediate vicinity of the appeal site. The alternative solution, they suggest, would be a 30m high monopole structure in the locality of the shopping centre. Whilst there will be some visual impact, this impact is mitigated through an innovative design and a consistent approach to the appearance of the equipment and shrouds. The finishes are intended to reflect the external cladding of the upper floor of the shopping centre and read as a vertical extension as opposed to rooftop plant or equipment. On balance, I do not consider that the proposal, alone or in conjunction with concurrent appeals (ABP-315533-23 and ABP-315571-23), would result in a negative visual impact which would be detrimental to the visual amenities of the area.
- 7.2.3. Finally, in terms of co-location, I note that alternative sites were examined and discounted due to being either unsuitable or already utilised by the subject provider. Moreover, the applicant contends that co-location with other providers has been proposed, as evidenced by the concurrent appeals, resulting in telecoms infrastructure on the same building, rather than in a number of different proximate locations. This approach is supported by the Telecoms Planning Guidelines which states that the use of the same building by competing operators in urban or suburban areas will almost always improve the situation. I am therefore satisfied that the applicant's approach to

co-location would not represent a proliferation of such equipment, but is a clustering of telecoms structures, which would actually reduce the proliferation of such structures appearing on sites elsewhere in the locality. I do not therefore agree with the Planning Authority that the proposal would be obtrusive and incongruous in this regard.

- 7.2.4. Having reviewed the application, appeal submission, and given the deficit of network coverage across operators, I am satisfied that the proposal as a standalone development, or in conjunction with concurrent proposals, is visually acceptable. I consider that the significant benefits of the proposal outweigh any visual impacts which will be intermittent, localised and absorbed within the receiving environment.

7.3. **Appropriate Assessment**

- 7.3.1. Having regard to the nature and scale of the proposed development, which is for telecoms infrastructure consisting of 6 no. antennas, 1 no. microwave dish and associated equipment mounted on a rooftop in an established and serviced urban area, the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, 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**

- 8.1. I recommend that planning permission be **granted** for the reasons and considerations set out below.

9.0 **Reasons and Considerations**

- 9.1. Having regard to the provisions of the Fingal Development Plan 2023-2029 and the Telecommunications Antennae and Support Structures Guidelines (1996), as amended by Circular Letter PL 07/12, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be visually obtrusive to, or detract from, the visual amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<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 interests of clarity.</p>
2.	<p>In the event of the proposed structures becoming obsolete and being decommissioned, the developer shall, at their own expense remove the telecommunications structures and associated equipment.</p> <p>Reason: In the interest of orderly development.</p>
3.	<p>The antennae type and mounting configuration shall be in accordance with the details submitted with this application, and notwithstanding the provisions of the Planning and Development Regulations 2001, and any statutory provision amending or replacing them, shall not be altered without a prior grant of planning permission.</p> <p>Reason: To clarify the nature and extent of permitted development to which this permission relates and to facilitate a full assessment of any future alterations.</p>
4.	<p>Details of the proposed material finish/colour scheme for the telecommunications structure and ancillary structures (which shall closely reflect the existing appearance of the roof) shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the development.</p> <p>Reason: In the interests of the visual amenities of the area.</p>
5.	<p>No advertisement or advertisement structure shall be erected or displayed on the proposed structure or its appendages without a prior grant of planning permission.</p>

	Reason: In the interest of the visual amenities of the area.
6.	<p>Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.</p> <p>Reason: In the interest of public health.</p>
7.	<p>The developer shall provide and make available of reasonable terms the proposed support structure for the provision of mobile telecommunications antenna of third-party licenced telecommunications operators.</p> <p>Reason: In the interest of avoidance of multiplicity of telecommunications structures in the area, in the interest of visual amenity and the proper planning and sustainable development of the area.</p>
8.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contributions Scheme made under section 48 of the Planning and Development Act 2000 as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer, or in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</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.

Philip Maguire

Planning Inspector

19th June 2023