



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315429-22

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<b>Development</b>	Streetworks solutions to address identified mobile and wireless broadband coverage blackspots
<b>Location</b>	Public grass verge along Dublin Road, Racecourse Common, Lusk, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	S254/11/22
<b>Applicant(s)</b>	Emerald Tower Limited
<b>Type of Application</b>	Licensing of appliances etc. (s. 254)
<b>Planning Authority Decision</b>	Refuse Licence
<b>Type of Appeal</b>	First Party (s. 254)
<b>Appellant(s)</b>	Emerald Tower Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> March 2023
<b>Inspector</b>	Philip Maguire

## 1.0 Site Location and Description

- 1.1. The appeal site is located along and west of the Dublin Road in Lusk, Co. Dublin, just north of the R127, where a 60kph speed limit applies. The R127 forms a bypass around the eastern side of the town from the Skerries Road roundabout in the north to the Dublin Road roundabout in the south. The town is generally contained with the bypass. The Forge housing estate is to the east and farm buildings lie to the west.
- 1.2. The appeal site is flat and consists of a small section of grass verge. A footpath runs to the rear of the grass verge with a wider grass margin just further west which includes a footpath leading towards the entrance of the farm buildings and adjacent houses. A street lighting column and street tree lie to the south with another street tree to the north. Other lighting columns and street trees are in close proximity to the appeal site. A segregated pedestrian and cycle track runs to the east of the Dublin Road.

## 2.0 Proposed Development

- 2.1. A Section 254 licence is sought for telecommunications infrastructure consisting of a 18m high freestanding galvanised and painted monopole structure including 3 no. 4m antenna, internal cabling, external dishes, operator's cabinets, and ancillary works.
- 2.2. The monopole would have a uniform thickness of 406mm. The 2 no. dishes would be 300mm in diameter. The operator's cabinets would be 1.30m and 1.90m wide, 1.65m high and 0.80m deep, and green in colour. The stated purpose of the proposed structure is to address mobile and wireless broadband coverage blackspots. The duration of licence sought is 5 years, indicated as August 2022 to August 2027.
- 2.3. Additional drawings were submitted as part of the appeal. They include a viewpoint location map and suite of photomontages from 3 no. viewpoints (VPs). The drawings are identical to those lodged with the Planning Authority and do not alter the proposal.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority decided to refuse to licence the proposed development on 6<sup>th</sup> December 2022 for the following reason:

*Having regard to the Telecommunications Antennae and Support Structures Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in 1996 (as updated by Circular Letter PL 07/12); Objectives IT07 and IT08 of the Fingal County Development Plan 2017-2023, it is considered the height, scale and prominent location of the proposed development in an area that is zoned 'Open Space' and the existing street furniture on the site, the proposed development would be visible from the public domain at street level, and would have an adverse impact on the visual amenities of the area and on the approach into Lusk town and would result in clutter. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area and Fingal County Development Plan 2017-2023.*

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

#### **3.2.1. Planning Reports**

- Planning Report (06/12/22): Basis for the Planning Authority decision. In terms of principle, it notes the zoning and rationale for the proposed development. It also notes that co-location at alternative sites was discounted on the basis of being significantly outside of the search area, although this was not fully accepted. In terms of visual and residential amenity impacts, it notes that the proposed design represents a simple and contemporary approach, and the overall height is required to clear local obstacles that would cause network interference. Referring to the submitted photomontages, it states that the pole and cabinets will be highly visible and add to clutter, impacting on open space and trees which enhance the approach to Lusk town centre and surrounding residential area. It notes the concerns outlined in the Parks Report regarding the impacts on root protection areas and Roads Section comments in respect of the preferred location of the pole etc. being set back from the road edge as they may diminish intervisibility. It concludes that the proposal would seriously injure the visual and residential amenity of the area.

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

- Roads (05/12/22): Non-committal.
- Parks (02/12/22): Non-committal.

### 3.3. Prescribed Bodies

- Irish Water (21/11/22): No objection subject to condition.

## 4.0 Planning History

### 4.1.1. Appeal site:

None.

### 4.1.2. Adjacent site(s):

Dublin Road Roundabout (c. 50m south, southeast)

**PA ref. S254/01/22:** Licence **granted** in May 2022 for a 15m high telecoms street pole etc. The duration of the licence was limited to a period of 5 years (Condition 2) and has yet to be implemented.

Dublin Road (c. 1km north, northeast)

**PA ref. S254/12/22:** Licence **refused** in December 2022 for a 18m high telecoms street pole etc. The decision is currently on appeal under **ABP-315428-22**.

## 5.0 Policy Context

### 5.1. Fingal County Development Plan 2023-2029

5.1.1. The current Development Plan came into effect on 5<sup>th</sup> April 2023. The Planning Authority decision of 6<sup>th</sup> 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 un-zoned and lies just south of an 'OS' Open Space zoning with an objective to *'Preserve and provide for open space and recreational amenities*.

5.1.3. The main policies and objectives relevant to the proposal are set out under Chapter 6 (Connectivity and Movement), 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:

- 6.5.10.2 – Regional/Local Roads
- 6.5.10.3 – Roads and Streets Design

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

5.1.5. I consider the following policies and objectives 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 IUO52** Ensure that applications made in relation to the provision of overground telecoms 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*.

**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.

## 5.2. **Guidance on the Potential Location of Overground Telecoms Infrastructure**

5.2.1. The *Guidance on the Potential Location of Overground Telecommunications Infrastructure on Public Roads* (DCENR, 2015) addresses the engineering appropriateness of siting telecoms equipment on the road network and considers specific locations from a high-level viewpoint. Section 5.1 notes that the safety of road users is paramount when considering site suitability. It states that the key determinant in any decision would be to ascertain that no adverse impact on road user safety would arise or restrictions on driver visibility or obstruction of footpaths would be caused etc.

- 5.2.2. Section 5.1 also notes that any telecoms infrastructure should be erected at a safe location outside of the 'clear zone' which it describes as 'the total width of traversable land on either side of the road/carriageway, within the road boundary, which is to be kept clear of unprotected hazards'. This area is available for use by errant vehicles.
- 5.2.3. Section 5.3 notes that DMURS applies in areas with a speed limit of 60kph or less.
- 5.2.4. A consideration of opportunities to facilitate telecoms infrastructure on the road network is set out in Table A. In terms of urban roads, it states that opportunities are generally limited to locations where a wide verge or footpath allows the accommodation of small cabinets/antennae and/or the erection of stand-alone poles.

### 5.3. **Design Manual for Urban Roads and Streets (DMURS)**

- 5.3.1. Guidance relating to the design of urban roads and streets is set out in DMURS (DTTS and DHPLG, 2013, updated May 2019). Section 4.3.1 illustrates the space needed for pedestrians to comfortably pass each other with reference to the anticipated levels of activity. The minimum space for two people to pass comfortably in areas of low pedestrian activity is 1.8m. The desirable space for two people to pass comfortably in areas of low to moderate pedestrian activity is 2.5m. The minimum space for small groups to pass comfortably in areas of moderate to high pedestrian activity is 3.0m.

### 5.4. **Telecommunications Guidelines**

- 5.4.1. 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.
- 5.4.2. 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 should be monopole rather than a latticed structure.

- 5.4.3. 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.
- 5.4.4. Section 4.6 of the Guidelines notes that ground-mounted single poles do not generally require fencing off the site or anti-climbing devices etc. It also states that it is unlikely that accessing the site will give rise to traffic hazards as maintenance visits should not be more than quarterly. During the construction period, depending on the location of the site, special precautions may have to be taken in relation to traffic.

## 5.5. **Circular Letters**

- 5.5.1. 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 the 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.
- 5.5.2. Circular Letter PL 11/2020 (DHLGH, December 2020) reminds planning authorities that whilst a s. 254 licence is required for works specified in s. 254(1) of the Planning and Development Act 2000 (as amended), including overground electronic communications infrastructure, any development carried out in accordance with a licence shall be exempted development for the purposes of the Act under s. 254(7).

The Circular also notes that exemptions for telecoms infrastructure along public roads do not apply where the proposed development is in sensitive areas where there is a requirement for Appropriate Assessment; or where the proposal would endanger public safety by reason of traffic hazard or obstruction of road users.

## **5.6. Natural Heritage Designations**

5.6.1. None relevant.

## **5.7. EIA Screening**

5.7.1. 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 1<sup>st</sup> Party appeal has been lodged by Entrust Ltd. on behalf of the applicant, Emerald Tower Limited.

6.1.2. The main grounds of appeal can be summarised as follows:

- Referring to the submitted visual assessment including photomontages, the applicant provides an analysis of the selected viewpoints and concludes that the 2 no. viewpoints along the Dublin Road (VP 1 and VP2) and the 1 no. viewpoint from the R127 (VP 3) will result in a moderate-low impact.
- It is suggested that the proposal is supported by the NPF (including NPO 4) and RPGs for the Greater Dublin Area 2010-2022 (sections 3.5.7, 6.6 and 6.6.3) and in doing so ensures the continuing investment in new and improved broadband for socio-economic benefit and wider economic competitiveness.
- It is stated that the proposal accords with the Fingal County Development Plan 2017-2023 (including Objectives IT07 and IT08) and suggests that the Planning Authority failed to attach the expressed policy support for broadband in its decision.



- It is submitted that site selection followed a sequential approach advocated in the Telecoms Planning Guidelines (1996), as updated, and the chosen site will allow for co-location thereby reducing the proliferation of telecoms structures in the area. The technical justification for site selection is also noted along with the proposed operator's co-location at the nearest telecoms sites which fall outside the search area. The appeal site is considered the optimal location given the constraints of the search area i.e. predominantly residential.
- Referring specifically to the refusal reason, the applicant indicates that the visual impact will be at most low-moderate and in any event will be absorbed and assimilated into the area which already has vertical structures such as streetlights, and the semi-mature trees will provide a natural backdrop.
- It notes that the site forms part of the road infrastructure and is not zoned notwithstanding the stated refusal reason. It considers that the proposal is an acceptable form of development adjacent to the adjoining grass margin.
- In terms of existing street furniture, it suggests that the existing streetlights have the effect of absorbing the proposal rather than creating any clutter to the degree implied in the stated refusal reason and it is submitted that 'visibility from the public domain at street level' cannot be sustained as a refusal reason given its proximity to these streetlights.
- Finally, in terms of adverse impacts on visual amenities, it notes that whilst the proposal will initially be noticeable, it will not have a negative effect on a wide road close to a roundabout with grassed margins given the relatively small footprint. With regards to the Planning Authority's claim that the location is an 'approach road', it contends that the road is an outer road capable of absorbing the proposal due to the space, tree screening and adjacent and streetlights.

## 6.2. Planning Authority Response

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

- No further comment to make and refers the Board to the Planner's Report.
- Provision should be made for a financial contribution in the event that the appeal is successful.

## 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 and clutter along the public road. This, the Planning Authority suggests, 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 5<sup>th</sup> April 2023 and a similar policy approach is reflected in Objective IUO53, as cited earlier in this report.
- 7.1.2. Having examined the licence 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 licence appeal are those raised in the grounds of appeal. The issues can be addressed under the following headings:
- Visual Amenity
  - Road Safety – *New Issue*
  - 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 ('Eir'), although I note that the site is located towards the periphery where coverage increases to 'very good' towards the town centre. Notwithstanding, I have reviewed the 4G and 5G coverage for other providers which includes 'fair' and 'fringe' service with disconnections likely, and on balance, I accept that there is a need for improved mobile and wireless broadband coverage in this area noting the proposal will facilitate co-location with a future, to be determined, operator. This is also suggested in the existing and predicted indoor coverage maps submitted with the appeal, but I am not able to verify their modelling and do not afford them any weight. Overall, I accept that local and national policy seeks to support and encourage new telecoms infrastructure in such circumstances.

- 7.2.2. In terms of design, the applicant justifies the proposed height on the basis of obstacle clearance that would otherwise cause network interference. In this regard, I note that the grassed margin contains a number of semi-mature trees, and the Forge housing estate lies to the east where the prevailing height is two-storey. Whilst I accept that the proposed structure would be more visible than adjacent trees and lamp standards, I consider that critical views would be generally limited and absorbed within this receiving environment. I also note that the road alignment would impede many views travelling in both directions. On balance, I do not consider that the proposed development would have an adverse impact on the visual amenities of the area or result in street furniture clutter on this southern approach into Lusk town centre.
- 7.2.3. Finally, in terms of co-location, I note that alternative sites were examined and discounted due to being either unavailable or already utilised. I specifically note that the street pole licenced c. 50m south, southeast of the appeal site (PA ref. S254/01/22) is unimplemented and due to expire in May 2027 and this is determinative, in my opinion. I also note that the proposed development itself has co-location capabilities which will reduce the proliferation of such infrastructure at this gateway location.
- 7.2.4. Having reviewed the licence application, appeal submission, and given the deficit of network coverage in the area, I am satisfied that the proposal is visually acceptable.

### 7.3. **Road Safety – *New Issue***

- 7.3.1. I note that the proposal would be sited immediately adjacent to the Dublin Road. I also note that the posted speed limit along this stretch of road is 60kph, and the verge and footpath widths are illustrated as 1.99m and 1.40m, respectively. The footpath width is somewhat short of the DMURS standard for low pedestrian activity areas.
- 7.3.2. Whilst the Planning Authority has not raised any specific concerns regarding road safety, I note the comments in the Roads Report indicating the proposal could diminish pedestrian and vehicular intervisibility and highlighting a preference for the cabinets and pole not to be located directly along the road edge. I share these concerns and consider that the street pole and two operator cabinets, could obscure pedestrians from the view of drivers travelling northwards along the Dublin Road, particularly the most vulnerable road users including children and those with impaired mobility. This is particularly acute given the footpath width at this location which may prompt pedestrians into the grass verge and onto the carriageway to avoid the cabinets.

7.3.3. In the absence of any documentation to prove otherwise, I consider the proposal would endanger public safety by reason of traffic hazard or obstruction of road users. This is a new issue, and the Board may wish to seek the views of the parties in accordance with section 137 of the Planning and Development Act 2000 (as amended).

#### 7.4. **Appropriate Assessment**

7.4.1. Having regard to the nature and scale of the proposed development, which is for telecoms infrastructure consisting of a 18m high street pole and operator cabinets 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 a section 254 licence be **refused** for the reasons and considerations set out below.

### 9.0 **Reasons and Considerations**

9.1. Having regard to the provisions of the section 254 of the Planning and Development Act 2000 (as amended), the Fingal Development Plan 2023-2029, and the Telecommunications Antennae and Support Structures Guidelines (1996), as amended/updated by Circular Letters PL 07/12 and PL11/2020, it is considered that, the proposed development, by virtue of its siting on a grass verge between a narrow footpath and road edge, would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise.

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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Philip Maguire  
Planning Inspector  
14<sup>th</sup> June 2023