

An
Bord
Pleanála

Inspector's Report ABP317953-23

Development

Licence for 18 metre telecommunications infrastructure and cabinet.

Location

West side of Rochestown Avenue in Dun Laoghaire adjacent to bus stop (ID7056).

Planning Authority

Dun Laoghaire Rathdown County Council.

Planning Authority Reg. Ref.

CTT.23.054-280781.

Applicant(s)

On Tower Ireland Limited.

Type of Application

Section 254 Licence Application.

Planning Authority Decision

Grant with conditions.

Type of Appeal

Third Party

Appellant(s)

Rochestown Mast Action
Representative Group (RMAR)

Observer(s)

None.

Date of Site Inspection

20/11/23

Inspector

Anthony Abbott King.

1.0 Site Location and Description

- 1.1. The site is located on the west side of Rochestown Avenue comprising a deep grass verge to the south-west of the carriageway adjacent to a bus stop identified as ID7056. The bus stop is to the immediate south of the site location.
- 1.2. The grass verge is defined by the carriageway and mature planning along the property boundary with open vacant lands to the south-west associated with the National Rehabilitation Hospital. These lands are zoned for economic development and enterprise.
- 1.3. There is a residential housing estate to the north-east across the carriageway known as Somerton. The lands to the north west and to the south east of this residential area are areas of open space.
- 1.4. Rochestown Avenue is a heavily trafficked urban artery (R828).

2.0 Proposed Development

- 2.1. Licence for an 18 metre high telecommunications street pole and associated cabinet.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted a licence to place a telecommunications cabinet measuring externally 0.892m³ and an 18m pole subject to a minimum footpath clearance of 1.8m and the general licence conditions pertaining to the use of this licence (23 conditions).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning case officer recommends the issue of the licence.

3.2.2. Other Technical Reports

There are no objections recorded in internal planning authority reporting.

4.0 Planning History

None relevant.

5.0 Policy and Context

5.1. Development Plan

The Dun Laoghaire-Rathdown County Development Plan 2022-2028 is the local planning policy document. The following policy objectives are relevant:

- Chapter 13 (Land Use zoning objectives), Table 13.1.1 (Development Plan Zoning Objectives) and Zoning Map 7 is relevant.

The site is located immediately adjacent to the public carriageway and is not as such subject to a land use zoning objective. However, for the purpose of context the following is relevant.

The area zoning objective to the immediate south-west is Objective 'E': *to provide for economic development and employment.*

The area zoning objective to the immediate north-east (across Rochestown Avenue) is "A": *To provide residential development and improve residential amenity while protecting the existing residential amenities.*

Public services are permitted in principle.

- Chapter 6 (Enterprise & Employment) Policy Objective E2 (Knowledge Economy), Chapter 10 (Environmental Infrastructure & Flood Risk) Policy Objective E120 (Telecommunications Infrastructure) and Chapter 12 (Development Management) Section 12.9.8 (Telecommunications) are relevant. Section 12.9.8 *inter alia* states:

In consideration of proposals for telecommunications antennae and support structures, applicants will be required to demonstrate:

- Compliance with the Planning Guidelines for 'Telecommunications antennae and Support Structures; (1996), Circular Letter PL08/12 DOELG and to other relevant publications and materials;
- On a map location of existing telecommunications structures within a 1km radius justification of the proposal stating why it is not feasible to share existing facilities having regard to the 'Code of Practice on Sharing Radio Sites;
- To what degree the proposal will impact the occupiers of nearby properties or the amenities of the area;
- Any impacts on right-of-way and walking routes;
- The proposal shall not have a significant negative visual impact.

Policy Objective E120 states:

It is a Policy Objective to promote and facilitate the provision of an appropriate telecommunications infrastructure, including broadband, fibre optic connectivity and other technologies, within the County.

Other Relevant Planning Policy Guidance

Guidance for Consent Authorities regarding Sub-Threshold Development
(Government of Ireland 2020)

5.2. EIA Screening

5.3. The subject development does not fall within a class for which EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised below:

- There was no public consultation with local residents including the residents of Somerton proximate to the proposal. The residents and people working in

the area were not consulted in regard to the location and scale of the proposal. This is a clear contravention of the Aarhus Convention on public rights. There was no site notice erected and documentation was not available on the planning authority (DLR) website;

- The application documentation does not show proof of demand from any local residents or 'Three' customers. There is no justification for more mobile and wireless broadband coverage and therefore for additional masts. The increased demand for services cannot be justified by Covid 19 requirements to work at home. It is categorically untrue that the subject coverage area is a blackspot, as locals will testify there is 'very good' coverage for 'Three', 'Eir' and Vodafone. The area shown on the submitted documentation as deficient in service is mainly a car park;
- The planning authority has concurrently granted a licence to the ESB for a 'multi-operator' 30m mast beside the National Rehabilitation Hospital approximately 200m from the applicant site. The appellant strongly opposes the granting of both of these permissions on the basis that there is no justification for either of these masts in the area;
- The proposal may cause health issues including to children who absorb more EMF radiation than adults as a result of radiation emissions from the proposed mast. The proposed development is proximate to local homes, a hospital and businesses. There are dwellings including at Somerton within a 30m potential 'RF exclusion zone'. The exclusion zone is the region around the radio-frequency (RF0) transmitting antenna;
- Local residents do not want additional telecommunications infrastructure in the area. They are already exposed to excessive EMF levels from the existing masts on the roof of the 'Rochestown Lodge Hotel'. They are particularly concerned about additional exposure in particular to high levels of 4G and 5G pulsed electromagnetic radiation;
- Electromagnetic radiation exposure can result in adverse health outcomes as evidenced in peer-review studies and lived experiences. It should be noted that the International Commission on Non-Ionising Radiation Protection Guidelines are not actually protective against biological damage;

- The proposed 'monopole' and cabinet are not 'normal utility' structures. The proposal would have a negative impact on the residential amenity and visual amenity of the area by reason of its height, scale, appearance and siting adjacent to residential properties and would be out of character in the area by reason of its high visibility and the incongruous and over dominant nature of the structure. The proposal would have an adverse negative impact on No. 1 Somerton, which is the closet dwelling to the development. There will be significant visual impacts when viewed from Somerton. The proposal would be obstructive to the amenities of the dwellings in Somerton and devalue property;
- No environmental impact assessment has been carried out by the applicant in order to identify the environmental and social impacts of the proposed project.

6.2. Applicant Response

The applicant's response, prepared by David Mulcahy Planning Consultants Ltd., is summarised below:

- In the matter of the bona fides of the appellant, there is no list of signatures provided to demonstrate who is represented by the appellant group (RMAR). The number of people involved in the appeal is not transparent. Therefore no mandate has been shown to demonstrate that this 'group' (if in fact it exists) is representative of local residents. The appeal should be assessed by the Board on the basis of being from a single person – Ms. Dorene Plalmer;
- In the matter of public engagement with local residents, there is no legal obligation for the applicant to advertise the development via public notices;
- In the matter of customer demand, the requirement for the 'street pole' relates not to customer demand rather the applicant's system upgrade based on a technical appraisal undertaken by their radio engineers determining the requirement for a 'street pole' within a search ring of 250m to provide improved services. Furthermore, the proposed location is in the centre of "Threes" surrounding infrastructure and will alleviate mobile traffic on surrounding towers optimising the network;

- In the matter of telecommunication coverage, the spatial area to the west of the site, primarily relating to the National Rehabilitation Hospital, clearly demonstrates poor coverage, as shown in Figure 4 of the planning statement submitted with the application. The applicant has exhausted all other location options to provide the required infrastructure;
- In the matter of a concurrent ESB application, the Section 254 application for the subject development was lodged on the 21st February, 2023 and granted on the 12th June, 2023 prior to the lodgement of the ESB telecoms application in June for a 30m multi-operator mast approximately 200m from the applicant site;
- In matter of the claim that local residents are already exposed to excessive electromagnetic radiation, in particular concern about additional continuous high levels of pulsed electromagnetic exposure arising from 4G and 5G transmissions, the applicant will build the subject infrastructure in accordance with current health & safety legislation and guidelines. The proposed infrastructure is designed to be in full compliance with the limit set by the Guidelines of the 'International Commission on Non-ionising Radiation Protection';
- The Board have previously addressed the above health and safety issues and agreed that radiation emissions are not a planning matter. The Board is referred to a number of extracts from relevant ABP inspector reports in support of that statement. The issue of human health is a matter for Comreg;
- In the matter of negative visual impact of the proposed cabinet and monopole, the applicant reiterates the point of view, expressed in the submitted planning statement with the licence application, that the development is a normal utility structure that will become an accepted and normal part of the urban streetscape. The Board is referred to ABP Inspector reporting on similar telecommunication infrastructure developments in terms of their visual impact supporting the claim that such infrastructure is not out of character with urban / suburban streetscapes;
- In the matter of environmental impact assessment, there is no mandatory requirement for EIA given the site, scale and location of the development.

Furthermore, as we are aware a sub-threshold EIA has never been required in the matter of a street pole and the subject pole is not located near any sensitive locations or features;

- In the matter of a previous ABP refusal of an 18m pole in June 2023 in Limerick on visual amenity grounds extrapolated to the visual impacts on the residents of the Somerton estate, which is proximate to the application site, the applicant submits to the Board that each appeal should be assessed on its own merits based on the specific site context;
- In the matter of the planning statement submitted with the application with reference to the Covid 19 crisis, it is acknowledged that the Covid19 crisis is over. However, changes in behaviour including working from home practices require that high-quality telecommunications are available for home working and that this is not unreasonable;
- The applicant relies on the Board to uphold the decision of the planning authority to grant permission.

6.3. Planning Authority Response

None recorded.

6.4. Observations

None.

7.0 Assessment

- 7.1. The appeal is made under the provisions of Section 254 of the Planning and Development Act, 2000, which relates to licensing of appliances, cables etc. located on public roads. Section 254 (5) states that in consideration of an application for licence under Section 254 a planning authority, or An Board Pleanála on appeal, shall have regard to the following:

- (a) The proper planning and sustainable development of the area;
- (b) Any relevant provisions of the development plan, or local area plan;

(c) The number and location of existing appliances, apparatuses or structures, on under, over or along the public road, and

(d) The convenience and safety of road users including pedestrians.

7.2. This appeal relates to the installation of an 18m telecommunication 'Evolution' street pole and associated cabinet beside the public highway on public land. The street pole will have an approximate diameter of 406mm and would be galvanised and painted up to a height of 14.08m. The antenna would be mounted above that level to the fished height of 18m. The associated cabinet at the base of the street poll comprises in measurement the following:

- 1600mm in height,
- 900mm in width
- and in frontage length 600mm.

7.3. The proposal would be provided by 'On Tower Ireland Limited' and would be operated by 'Three Ireland'. It is considered that the main planning considerations relevant to the appeal case are as follows:

- public consultation and local service demand;
- existing telecommunications infrastructure in the area is sufficient;
- potential visual impacts;
- other environmental impacts;
- environmental impact assessment;
- duration of licence;
- appropriate assessment.

7.4. In the matter of the proper planning and sustainable development of the area, the appellant claims *inter alia* that there will be significant visual and environmental impacts on residential amenities and would be out of character with the area. The applicant has made a detailed response to the grounds of appeal.

Public consultation and local service demand

The appellant notes that residents and people working in the area were not consulted in regard to the location and scale of the proposal. It is claimed this is a

clear contravention of the Aarhus Convention on public rights. It is also claimed that the applicant documentation does not show proof of demand from any local residents or customers. Furthermore, the requirement for additional capacity, which may have materialised during the Covid 19 pandemic is no longer a valid argument.

The applicant in the planning statement submitted to the planning authority states that the site is required in order to improve network coverage in the local area as a coverage blackspot has been identified by radio engineers. The applicant claims the proposal will bring full indoor / outdoor coverage to a significant 'splay' of residential and business premises in the area. In response to the identified service upgrade requirement a site on the western side of Rochestown Avenue was chosen to accommodate the infrastructure for the following reasons:

- It is within the 250 metres search ring corresponding to the coverage back spot;
- There is adequate space to accommodate the street pole and cabinet;
- There is fibre located close to this location to ensure connectivity with the network;
- The location will not interfere with other utility services and the footpath;
- There are no dwellings facing the site.

The applicant response on appeal acknowledges that the Covid19 crisis is over. However, changes in behaviour including working from home practices require that high-quality telecommunications are available for home working and that this is not unreasonable. The applicant clarifies that the technical appraisal undertaken by their radio engineers determining the requirement for a 'street pole' within a search ring of 250m for the purposes of providing improved services.

It is considered that the applicant has discharged all statutory requirements in the application process for a Section 254 licence. Furthermore, it is considered that the applicant has adequately demonstrated, both within the documentation submitted to the planning authority and in the appeal statement response, the requirement for the new telecommunication infrastructure.

The existing telecommunications infrastructure in the area is sufficient

The appellant claims there is no evidence base requirement for additional masts, as service provision is 'very good' in the area and that other sites are available. The applicant response on appeal reiterates that the spatial area to the west of the proposal, primarily relating to the National Rehabilitation Hospital to the north west of the site, clearly demonstrates poor indoor coverage, as shown in Figure 4 of the planning statement submitted with the application.

The Planning Statement dated 16th February, 2023 evaluates other telecommunication sites, including sites A-F within a 612m to 1.1 km spatial range, proximate to the applicant site. The applicant details why these sites are deemed unsuitable. In summary the existing identified telecommunications infrastructure is located outside the 250m search ring.

The applicant claims all other location options to provide the required infrastructure have been exhausted. The applicant response on appeal states that the proposed location is in the centre of "Threes" surrounding infrastructure and will alleviate mobile traffic on surrounding towers optimising the network. I consider that the applicant has demonstrated the requirement for additional telecommunications infrastructure given the evaluated status of the existing proximate telecommunication structures.

The appellant has cited the grant of licence to the ESB for a 'multi-operator' 30m mast beside the National Rehabilitation Hospital in June 2023, which is claimed is within 200m of the site location. The applicant response on appeal clarifies that the planning authority granted the licence on the 09/08/23. The licence the subject of this appeal was granted on the 12/06/2023 before the grant of the ESB licence. These matters are noted.

Potential visual impacts

The appellant states that the proposed 'monopole' and cabinet are not 'normal utility' structures and that they will have an adverse visual impact. The appellant claims the proposal would have a negative impact on the residential amenity and visual amenity of the area by reason of its height, scale, appearance and siting adjacent to residential properties and would be out of character in the area by reason of its high visibility and the incongruous and over dominant nature of the structure.

The applicant response on appeal states that the development is a normal utility structure that will become an accepted and normal part of the urban streetscape.

I would agree with the appellant that the proposed 'monopole' and cabinet are not 'normal utility' structures by reason of height, scale and dominance. However, on balance the potential visual impact of the proposal may not be significant. It is considered there may be a noticeable change in the receiving environment without significant consequences.

The submitted photomontages show the potential visual impact of the proposal from a number of identified viewing points including the housing estate at Somerton north-east of the site and across the Rochestown Avenue carriageway. The proposed 18m street 'monopole' (and cabinet) will be visible to motorists on Rochestown Avenue and other road users from viewing points north-west and south-east of the site given the height, scale and dominance of the proposed monopole structure. However, it is considered that the proposal while creating a noticeable change in the receiving environment would not result in significant adverse visual impacts principally given the relatively modest diameter of the monopole (406mm).

In regard to the visual impact of the proposal on neighbouring residential properties including at Somerton, it is considered that there will be a noticeable change in the physical environment in the environs of the cul-de-sac. No.1 Somerton is the closest dwelling to the proposal. The houses located at Somerton are to the north east of the site and are in a diagonal line of vision from the access road. I would concur with the planning case officer that the proposed development would not adversely impact residential amenities in terms of visual impacts.

I consider that no significant visual impacts would arise in part given the mitigation provided by mature planting to the south-west of Somerton, along the carriageway between Somerton and the site location, and given the modest diameter (406mm) of the street monopole below the antenna structure that would provide reduced visibility at eye level.

Health and safety issues

The appellant cites health issues arising from electromagnetic radiation, *inter alia* arising from 4G and 5G transmissions from the operation of the telecommunication infrastructure, and states that local residents are already exposed to excessive

electromagnetic radiation from other existing sources. Section 2.6 (Health & safety Aspects) of Circular Letter PL 07/12 states that the planning authority should be primarily concerned with the appropriate location and the design of telecommunication structures. They do not have competence for health and safety matters, which are regulated by other codes.

The applicant response on the appeal commits to build the subject infrastructure in accordance with current health & safety legislation and guidelines. The applicant clarifies that the proposal is in full compliance with the limits set by the Guidelines of the 'International Commission on Non-ionising Radiation Protection'. It is considered that the applicant has demonstrated compliance with relevant planning guidance on the provision of telecommunications infrastructure and other relevant material as provided for by the Section 12.9.8 (telecommunications development management requirements), of the Dun Laoghaire-Rathdown County Development Plan 2022-2028.

Environmental Impact Assessment of environmental and social impacts

The appellant claims that no Environmental Impact assessment has been carried out by the applicant in order to identify the environmental and social impacts of the proposed project. The applicant response to the appeal statement states there is no mandatory requirement for EIA given the site, scale and location of the development. Furthermore, as the applicant is aware a sub-threshold EIA has never been required in the matter of a street pole and the subject pole is not located near any sensitive locations or features. I consider that the development does not fall within a class for which EIAR is required.

- 7.5. In the matter of relevant development planning and local area plan policy, having regard to the location and nature of the proposed development, it is considered that it would be consistent *inter alia* with Policy Objective E2 (Knowledge Economy), Policy Objective E120 (Telecommunications Infrastructure) and Chapter 12 (Development Management) Section 12.9.8 (Telecommunications) of the Dun Laoghaire-Rathdown County Development Plan 2022-2028.
- 7.6. In the matter of the number and location of existing appliances, apparatuses or structures, on under, over or along the public road, it is noted that the proposed

street pole and cabinet will be located proximate to the existing bus stop identified, as ID7056, and may appear from view points as a cluster of utilities.

- 7.7. In the matter of the convenience and safety of road users including pedestrians, Roads Maintenance and Traffic Section of the planning authority have no objection to the proposed development. The Traffic Section notes that their response is conditional on the footpath not being impeded when the cabinet doors are open. It is considered that the location of the subject cabinet (height 1652mm & frontage length 600mm) within the grass verge, the width of the cabinet (900mm) and the dept of the grass verge would ensure that there would be no obstruction of the public footpath.

Duration of Licence

- 7.8. The planning authority issued a five year licence form (12/06/2023 – 11/06/2028). Section 2.2 (Temporary Permissions) of Circular Letter PL 07/12 states that 'attaching a condition to a permission for telecommunication masts and antennae which limit their life to a set temporary period should cease' except in exceptional circumstances. Therefore, as no exceptional circumstance is highlighted, I consider a ten year licence is reasonable.
- 7.9. In conclusion, the proposal to installation an 18m telecommunication 'Evolution' street pole and associated cabinet beside the public highway on Rochestown Avenue would be consistent with the relevant Dun Laoghaire-Rathdown County Development Plan 2022-2028 policy framework, would not cause adverse impacts on visual and residential amenities, would not inconvenience the safety of road users including pedestrians, and as such, would be consistent with the proper planning and sustainable development of the area.

7.10. Appropriate Assessment Screening

The proposed development comprises telecommunication infrastructure in an established urban area.

Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the provisions of section 254 of the Planning & Development Act, 2000 (as amended), the grounds of appeal, the response of the applicant and the location and nature of the development, comprising an 18m telecommunication 'Evolution' street pole and associated cabinet, it is considered subject to compliance with the conditions set out below that the proposed development would be consistent with the relevant Dun Laoghaire-Rathdown County Development Plan 2022-2028 policy framework, would not cause adverse impacts on visual and residential amenities, would not inconvenience the safety of road users including pedestrians, and as such, would be consistent with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) This licence shall apply for a period of ten 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.

(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.

Reason: To enable the impact of the development to be re-assessed, having regard to changes in technology and design during the specified period.

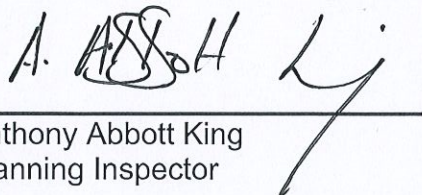
3. Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.

Reason: In the interest of public health.

4. The antenna type and mounting configuration shall be in accordance with the details submitted with this application for a licence, 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 permission.

Reason: To clarify the nature and extent of the permitted development to which this permission relates and to facilitate a full assessment of any future alterations.

"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".



Anthony Abbott King
Planning Inspector

04 December 2023