



An  
Bord  
Pleanála

## Inspector's Report ABP318015-23

### Development

The installation of a 10.8m single operator pole, associated equipment, together with ground-based equipment cabinets and all associated site development works for wireless data and broadband services.

### Location

Colliemore Road, Dalkey, County Dublin.

### Planning Authority

Dun Laoghaire Rathdown County Council

### Planning Authority Reg. Ref.

CTT.22.050-273264?

### Applicant(s)

Emerald Tower Limited

### Type of Application

Section 254 Licence Application

### Planning Authority Decision

Refuse.

### Type of Appeal

First Party

### Appellant(s)

Emerald Tower Limited.

### Observer(s)

(1) Cara Mercier & Eric Byrne  
(2) Bryan Andrews

- (3) Orla Mc Mahon
- (4) Gerard Ryan
- (5) Coilemore Road Residence  
Association

**Date of Site Inspection**

20/11/23.

**Inspector**

Anthony Abbott King.

## 1.0 Site Location and Description

- 1.1. The applicant site comprises a section of the public footpath on the north-east side of Colliemore Road. The existing footpath is defined by the footpath edge onto the Colliemore Road carriageway and the back of the footpath comprising the property boundary with 'Lota' and the adjacent property to the south.
- 1.2. The footpath at the proposed site location is concrete and is relatively wide given that the footpaths in the area are generally narrow given the historic road configurations.
- 1.3. The opposite side of the street does not have a viable safe footpath. It is noted that immediate opposite the applicant site is the vehicular access to a residential property on the south-west side of Colliemore Road.
- 1.4. The property boundary is defined by a masonry rubble stone clad wall and fence structure with alternating solid and void sections above a solid masonry plinth. There is a mature hedge located behind the boundary structure that screens the void sections of the fence.

## 2.0 Proposed Development

- 2.1. The proposed development is for the installation of a 10.8m single operator pole, associated equipment, together with ground-based equipment cabinet, and all associated site development works for wireless data and broadband services.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decision was to refuse the license for the following reasons:

*Dun Laoghaire-Rathdown County Council gave reviewed the application and wish to advise that the license request has been refused.*

*Transportation Planning Section object to this application as it will greatly obstruct the footpath as 1.8m footpath width minimum is required.*

*The Conservation Division cannot support the issuing of a Section 254 license for a telecommunications pole and associated infrastructure at the proposed location as they consider it would be contrary to County Development Plan 2022-2028, Specific Local Objective 130.*

*Road Maintenance have recommended refusal as the proposed structure is located along the main pedestrian route. The back wall is often used to guide a partially sighted or blind person and this this location should be kept clear. Also, the width outside the proposed structure is 1.250m. This clearance width is deemed to be inadequate along this busy tourist route and a route to school, especially as this will be reduced further when the cabinet doors open.*

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

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

The decision of Dun Laoghaire-Rathdown County Council does not reflect the recommendation of the planning case officer who concluded:

*The Planning Department have no objections under items A, B or C of subsection 254(5) of the Planning and Development Act 2000, as amended, to issuing the required license under Section 254 (ee) of the Act, revised by S.I. No. 391 of the 2016 European Union Regulations 2016.*

It is noted that there were a number of objections under Item D of subsection 254 (5) – see below.

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

- The Traffic Section of the planning authority has no object to the location of the proposed development (8<sup>th</sup> February, 2023).
- Transportation Planning / Active Travel (January, 2023) object to the proposal, as it will greatly obstruct the footpath as 1.8m footpath minimum width is required;
- The Conservation Division of the planning authority do not support the license as it is considered that the infrastructure at the proposed location would be contrary to the Laoghaire-Rathdown County development Plan 2022-2028, Specific Objective 130.

- The Road Maintenance Division recommends refusal as the proposed structure is located along a busy main pedestrian route used by school children and tourists.

## 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 4: (Sandycove / Dalkey) 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 is “A”: *To provide residential development and improve residential amenity while protecting the existing residential amenities.*

Public services are permitted in principle.

- Chapter 14 (Local Policy Objectives) Local Policy Objective 130 is relevant as the proposed location is aligned with the spatial boundary of Policy Objective 130 and states the following:

To ensure that development within this objective area does not (i) have a significant negative impact on the environmental sensitivities in the area including those identified in the SEA Environmental Report, and/or (ii) does not significantly detract from the character of the area either visually or by

generating traffic volumes which would necessitate road widening or other significant improvements.

- 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.**

## 5.2. EIA Screening

- 5.3. The proposed development is not within a class where EIA applies.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appeal statement is prepared by Entrust Limited on behalf of the applicant / appellant Emerald Tower Ltd. The grounds of appeal are summarised below:

- The appeal relates to notification of the planning authority to refuse permission for a license for telecommunications infrastructure comprising a 'streetworks' pole and cabinetry, dated 12<sup>th</sup> April, 2023. The operator, namely Eircom Limited, trading as 'Eir' requires a site in this area of Dalkey to facilitate the roll out of their 3G, 4G and 5G networks. The current sites in the area do not provide adequate indoor service for high speed mobile broadband due to the hilly terrain and the steep drop toward the coast;
- National. Regional and local planning policy supports the proposal for the upgrade of the 'Eir' network. The Dun Laoghaire-Rathdown County Development Plan 2022-2028 acknowledges that telecommunications infrastructure is a key requirement within the County. The availability of services such as high-speed broadband is essential to the national economy and to local communities in everyday life;
- There is an urgent need in the area to provide new and improved high speed data and broadband services in order to improve network coverage as part of the 'Eir' mobile network improvement programme. The two existing co-located structures in the wider area at Castle Street, Dalkey and Killiney Hill Road, Scalpwilliam, Killiney are not sufficiently proximity (provision of 5G & 4G) / efficient to provide adequate data service to the area around Collimore Road, Victoria Road, Nerano Road, Green Road and the surrounding area. It is noted that modern telecommunications is classified by the Government as an essential public service and that all of the providers are required, including 'Eir' to provide 100% service coverage throughout the country. The site at Colliemore Road was chosen as there was no other possible site identified within the search area.

- The search area has many sensitive receptors including to the south a proposed heritage area (Dalkey & Killiney coastline), architectural conservation area and protected views. And to the north are protected structures and scheduled monuments;
- It is the appellants view that the planning authority did not give consideration to the 'built capacity' the proposal would provide in the area and consider the longer term benefits that would accrue, as the proposal would reduce the need for additional telecommunications infrastructure in accordance with the policy of the planning authority to reduce on-street clutter. What is required is a balance between planning requirements and access to modern communications, which is a quality of life issue;
- The proposal is fully compliant with the Planning guidelines for 'telecommunications antennae and support structures' (1996) as it has been demonstrated that 'Eir' has optimised co-location with competitor operators in the area and that there is still a deficiency in service provision.
- There would be no significant visual impact of the proposed development on the receiving environment given the design and height of the proposed 'Streetworks' pole and cabinetry. A number of publicly assessable viewpoints have been assessed with the aid of photomontages and there would be no significant visual impact over baseline.
- The proposed development with reference to Local Policy Objective 130 does not as evidenced in the visual assessment detract from the existing street character rather it assimilates with similar street lighting and signage present at the site location. Furthermore, the applicant / appellant has opted to reduce the height of the proposal to 10.8m; ;
- The proposal is optimally located with reference to residential property, it is not in the direct view of a dwelling or the windows of a dwelling, and coastal views. The site location is a suitable distance away from protected structures and protected views.
- The proposal with regard to health and safety considerations would comply with the emissions set-out by Com Reg.;

- The proposal would not affect the safety of road users, as the proposed location can accommodate the telecommunication infrastructure and pedestrian movement.

## 6.2. Planning Authority Response

None recorded.

## 6.3. Observations

There are 5 observers on the subject appeal, which are summarised below:

### (1) Cara Mercier & Eric Byrne

- The observer(s) support the decision of Dun Laoghaire-Rathdown County Council to refuse the subject license for reasons documented;
- Members of the public were not consulted, which is in contravention of the Aarhus Convention. There was insufficient time afforded to local residents and other members of the public to access the appeal documentation;
- The public were not alerted on time given the time frame for observation as the weekly An Bord Pleanála list did not advertise the submission of the subject appeal by the applicant for one week after submission and the planning authority does not notify the public of appeal on Section 254 licences;
- ABP does not provide appeal documents to members of the public. An FOI request to the planning authority in order to review the subject documentation;
- There is 'Eir' coverage in the area according to ComReg there is fair to good G5 'Eir' coverage in the area;
- There is no height restriction to a Section 254 licence. Therefore, there is no guarantee at a later stage that the applicant will add / stack additional antennae;
- Non-ionising RF/EMF radiation result in short term and long term adverse health effects, which is a significant matter albeit excluded from consideration in planning assessment given proximity of residential properties;

- The location of the applicant site is ambiguous as the submitted documentation show 3 different locations.

(2) Bryan Andrews

- The proposed location is a highly valued pedestrian route with high footfall, including children and tourists, the proposal will both obstruct accessibility and visibility for residents, the public and tourists;
- The proposal would constitute a highly obstructive feature in the streetscape and would be injurious to the visual amenities of the broader area;
- The proposal is close to residential properties, 20 metres, and until further research has been conducted into the long-term impacts of close proximity to telecommunication masts and associated infrastructure a precautionary distance from same should be observed;
- The proposal is contrary to the Dun Laoghaire-Rathdown county Development Plan policy framework including healthy placemaking, the creation of attractive, accessible neighbourhoods and quality of life.

(3) Orla Mc Mahon, Lota, 26 Colliemore Road, Dalkey, Co. Dublin.

- The mast and equipment will have a detrimental impact in terms of their aesthetic on their surroundings;
- The proposal physically (by narrowing the public space) and visibly will be a traffic hazard;
- The masts emit strong and constant 24hr microwave pulsed radiation which is potentially a health hazard;
- That the public has not been consulted or permitted to make submissions about these licences for telecom masts is in contravention of the Aarhus Convention.

(4) Gerard Ryan, 36 Colliemore Road, Dalkey A96VSTE

- The observer supports the appeal given the mobile signal for the 3 main carriers is currently 'exceptionally poor' along the shore line extending from Colliemore Harbour through Dalkey Sound toward Killiney Bay;

- There is a concern that emergency services cannot be contacted if users of Dalkey Sound get into trouble on or close to the water given the poor signal. Dalkey Sound is 'exceptionally busy' with leisure boats, other water based traffic and on-shore fishers on weekends and on days of warmer weather;
- The mobile signal is almost non-existent along or near the shore line and this fact should be considered in the appeal assessment by the Board.

(5) Coilemore Road Residents Association

- The observer supports the refusal of the Section 254 licence by Dun-Laoghaire-Rathdown County Council in the first instance;
- The proposed telecom structure will have an adverse visual impact, which is not well illustrated in the montage. Line of sight illustrations to the sea should have been included by the applicant;
- The precise positioning of the mast is unclear as there is a discrepancy in the submitted documentation;
- The mast and cabinet do not harmonize with their proposed surroundings. The generic modular nature of the mast and cabinet is of concern;
- The radiation level emitted through microwave technology is harmful (enunciated in peer review publications) in this instance to persons / local residents living in proximity within 50 metres of the proposed mast. These residents already have access to high speed broadband;
- The applicant did not engage with residents in the immediate area in any manner. This approach is continued in the applicants response on appeal. The applicants response on appeal is unhelpful in the use of technical language. Furthermore, there is an absence of response in relation to the medical, visual and environmental concerns highlighted by local residents.

## 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. The development relates to overground electronic communications infrastructure. The proposal comprises a 10.8m single operator pole, associated equipment, together with ground-based equipment cabinet and would be located abutting the property boundary on Colliemore Road. The communications infrastructure is referred to as a 'streetworks pole'. The justification for installation is the requirement to provide new and improved high-speed data and broadband services for the operator EIR.

The proposed telecommunications street pole would contain 'Eir's antennae encased inside the top of the pole and a cabinet for 'Eir' mobile. The street pole would be 10.8m in height. The submitted documentation to the planning authority proposes that the pole be black or grey in colour. The appeal statement clarifies that the pole colour is black to match the Victorian street furniture in the area. The appellant invites the Board to choose an appropriate alternative colour by way of condition - if the Board consider the colour proposed inappropriate. I

In addition to the street pole there would be an associated equipment cabinet, which would be located at the base of the street pole and would have the following dimensions (see Section 2.23 of the appeal statement):

- 1260mm in height,
- 681mm in dept and

- 1550mm in length

The planning authority refused the licence principally on the following grounds:

- deficient residual width of footpath
- potential visual impacts

7.3. The appellant claims that there is an urgent need in the area to provide new and improved high speed data and broadband services in order to improve network coverage as part of the 'Eir' mobile network improvement programme. The two existing co-located structures in the wider area at Castle Street, Dalkey and Killiney Hill Road, Scalpwilliam, Killiney are not sufficiently proximity (provision of 5G & 4G) / efficient to provide adequate data service to the area around Colliemore Road, Victoria Road, Nerano Road, Green Road and the surrounding area. It is noted that modern telecommunications is classified by the Government as an essential public service and that all of the providers are required, including 'Eir' to provide 100% service coverage throughout the country. It is claimed by the applicant that the site at Colliemore Road was chosen as there was no other possible site identified within the search area (1 km radius).

*Residual footpath width*

7.4. The site is demarcated on the relevant site location map as located directly opposite the vehicular access to a house on the opposite (south-west) side of Colliemore Road. There is no viable safe footpath on the opposite south-western side of the road. The footpath on the north-east side of the road in the location of the proposal is relatively wide, given the narrow footpath configurations in the area, comprising a concrete footpath measuring 2450mm in width. This footpath is the principal pedestrian routeway from Victoria Road to Colliemore Harbour.

The Road Maintenance Division of the planning authority recommended refusal as the proposed structure is located along a main pedestrian route. The Division notes that back wall (property boundary in this instance) is often used to guide a partially sighted or blind person. Therefore, there is a requirement to keep the property boundary back wall free from obstruction. It is further noted that the width outside the proposed structure would be 1.250m. Therefore, the clearance width proposed is deemed to be inadequate by the Road Maintenance Division of the planning

authority, given the residual footpath width, and the status of the subject footpath as a busy tourist route and route to school.

The appellant claims that the proposal does meet the 1.8m footpath clearance. The applicant states that planning authority internal reporting by the road maintenance and transportation planning section is erroneous. The applicant believes that planning authority internal reporting is a misreading of the drawings. It is claimed that the proposed cabinet dept of 0.681 m would allow for a residual clearance of 1819mm (cabinet doors closed).

It is considered that the stated width of the footpath is 2450mm (see site layout Drg. No. DN-2967-01-PD-03 dated 18/08/2022) and that a cabinet dept of 800mm (as stated in Section 2.75 of the appeal statement) or a dept of 681mm (as stated in Section 2.23 of the appeal statement) as shown on the site layout drawing would leave a residual footpath width less than the minimum 1800mm required by the transportation planning section / road maintenance division of the planning authority (2450mm – 681mm = 1769mm).

It is further considered that the residual footpath width, subject to the requirement for installation of the street pole and cabinet, may make movement challenging for pedestrians passing in both directions at the pinch point on the pathway in the location of the cabinet especially in the event of the opening of the cabinet doors (residual footpath width is given as 1250mm). It is further noted that there is no viable safe alternative pedestrian route on the opposite side of the carriageway. I conclude that the proposal on balance has the potential to obstruct pedestrian movement.

#### *Potential visual impacts*

- 7.5. The subject footpath is defined by the carriageway on Colliemore Road and the property boundary on the north-east side of the street. The property boundary comprises a masonry rubble stone clad wall and fence structure with alternating solid and void sections above a solid masonry plinth. The void sections are screened by a mature laurel type hedge, which does not exceed the height of the masonry wall and fence boundary.

The proposed site abuts the south-western spatial boundary of Local Objective 130. Local Objective 130 comprises a strip of territory between the coastline and

Colliemore Road, as illustrated on zoning Map 4 (Sandycove / Dalkey). The conservation division of the planning authority cite Specific Local Objective 130, which *inter alia* protects the character of the designated area including visual impacts. The applicant has provided a number of photomontages of the proposed development - 3 chosen viewpoints are identified. The publicly accessible viewpoints identified are assessed in terms of potential visual impacts. The appellant claims the viewpoints chosen expose 'the development in its fullest form in order to assess the highest possible impact of the proposal'.

The appeal statement claims with reference to the receiving landscape baseline that there would be no significant visual impact evidenced by the assessment of the impact on the 3 chosen viewpoints. The appellant explains the rationale for the site location optimising mitigation of impact to the more sensitive environment north and south of the site location including protected views. The appellant notes that there are a lot of street lights / telegraph / electricity poles with overhead cables in the area and that the proposed 10.8m 'aesthetic single operator pole' as opposed to the standard 18m dual operator pole is appropriate due to the 'relatively close proximity of dwellings'.

On the day of my site visit the site was relatively exposed located on the seaward side of Colliemore Road without the benefit of mature planting above the level of the boundary fence / wall and laurel hedge. The slim line design of the street pole has been motivated to minimise visual impact. The appellant claims it will blend into the existing street infrastructure comprising *inter alia* street lights and road sign poles and is sited relatively close to mature trees. It is also noted that the wires-cape in the site location, which is highly visible, is located on the opposite south-west side of the street and not on the seaward side of Colliemore Road.

Notwithstanding that the appellant predicts 'a maximum level of moderate-low visual impact', I would concur with the conservation officer that the proposed development would have a negative visual impact on views along Colliemore Road - given the relatively exposed nature of the site location and the unobstructed streetscape on the seaward side of Colliemore Road. It is also noted that the street pole will be clearly visible from viewpoints within the Local Objective 130 designation and when looking across the designation toward the sea from viewpoints on Colliemore Road.

Therefore, It is considered given the location of the proposal on Colliemore Road abutting the spatial boundary of Specific Local Objective L30, which seeks *inter alia* to protect against adverse visual impacts, that the proposal would on balance detract from the character of the area, would be inconsistent with Section 12.9.8 (Telecommunications) and Specific Local Objective 130 in terms of significant visual impacts within a sensitive receiving environment and would be contrary to the proper planning and sustainable development of the area.

- 7.6. The observations of the 5 number observers are noted including the observation of one observer that states that telecommunication coverage along the coast for marine users is suboptimal.
- 7.7. In conclusion, on balance it is considered given the residual footpath width less than the 1.8m requirement for safe movement, the lack of an alternative viable and safe pedestrian route, including for tourists and school children, and the potential significant adverse visual impacts within a sensitive receiving environment, that the proposed development would inconvenience and reduce the safety of pedestrians, would detract from the character of the area and would be inconsistent with Section 12.9.8 (Telecommunications) and Specific Local Objective 130 in terms of significant visual impacts and as such would be contrary to the proper planning and sustainable development of the area.

#### **7.8. 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**

- 8.1. I recommend that this appeal be disallowed and the licence refused for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

Having regard to grounds of appeal, the observations of third parties and the policy framework provided by the Dun Laoghaire-Rathdown Development Plan 2022-2028, including the promotion of telecommunications infrastructure for the purposes of facilitating the knowledge economy and providing for appropriate telecommunications and broadband connectivity, it is considered given the residual footpath width less than the 1.8m requirement for safe movement, the lack of an alternative viable and safe pedestrian route for footpath users, including tourists and school children, and the site location abutting Specific Local Objective 130, which seeks *inter alia* to protect against adverse visual impacts, that the 10.8m street pole and associated cabinet would on balance inconvenience and reduce the safety of pedestrians moving between Victoria Road and Colliemore Harbour, would detract from the character of the area, would be inconsistent with Section 12.9.8 (Telecommunications) and Local Objective 130 in terms of significant visual impacts within a sensitive receiving environment and would be contrary to the proper planning and sustainable development of the area.

## 10.0 Reason for Refusal

1.	It is considered given the residual footpath width less than the 1.8m requirement for safe movement, the lack of an alternative viable and safe pedestrian route for footpath users, including tourists and school children, and the site location abutting Specific Local Objective 130, which seeks <i>inter alia</i> to protect against adverse visual impacts, that the 10.8m street pole and associated cabinet would on balance inconvenience and reduce the safety of pedestrians moving between Victoria Road and Colliemore Harbour, would detract from the character of the area, would be inconsistent with Section 12.9.8 (Telecommunications) and Local Objective 130 in terms of significant visual impacts within a sensitive receiving environment and would be contrary to the proper planning and sustainable development of the area.
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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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Anthony Abbott King  
Planning Inspector

04 December 2023