



An  
Bord  
Pleanála

## Inspector's Report

### ABP-318653-23

<b>Development</b>	Streetworks solution to address identified mobile and wireless broadband coverage blackspots.
<b>Location</b>	Woodstown Avenue, Ballycullen, Co. Dublin.
<b>Planning Authority</b>	South Dublin County Council.
<b>Planning Authority Reg. Ref.</b>	S25426/22.
<b>Applicant(s)</b>	Emerald Tower Limited.
<b>Type of Application</b>	Section 254 Licence.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party.
<b>Appellant(s)</b>	Emerald Tower Limited.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	4 February 2024.
<b>Inspector</b>	Stephen Rhys Thomas.

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## **1.0 Site Location and Description**

- 1.1. The site is located close to the junction of Woodstown Avenue and Old Ballycullen Road, to the rear of the gateway pier entrance feature to the area known as Woodstown Village, Knocklyon. The subject site and surrounding area is very well maintained and currently functions as public open space, with lawned areas, shrubs and mature trees.
- 1.2. The character of the area is mainly residential with a local shopping centre, the Woodstown Shopping Centre located to the north. There is a recently constructed telecoms infrastructure pole and associated operator cabinet located on the grass verge of the Old Ballycullen Road, approximately 80 metres to the south west of the appeal site.

## **2.0 Proposed Development**

- 2.1. The applicant is applying for a licence to install and operate an infrastructure pole and associated operator cabinet. The development proposal is for the installation of an 18m freestanding galvanised pole with a diameter of 406mm, with internal cables, two 300mm diameter dishes and internal antennae.

A ground mounted cabinet with a footprint of 1.5 sqm, height 1.9 metres, length at base of 1.3 metres and width of 0.8 metres would be installed beside the pole and would be painted green. It is also proposed to leave space for co-location opportunities on the site.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The PA decided to refuse the licence application for the following reason:

As the subject development is not located on a road or footpath, as defined under the Roads Act, 1993 the proposal cannot be considered by the Planning Authority under the provisions of Section 254 of the Planning and Development Act 2000, as amended. As such, a licence cannot be granted by the Planning Authority for the subject development.

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

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

The development is permitted in principle.

The subject site is located in an area which is zoned "LC". The 'LC' land subject to the proposed development is not on land identified as being within the remit of a road margin or verge as described under Section 2 of the Roads Act 1993. Site is not on land identified as a road, margin or verge as defined under Section 2 of the Roads Act 1993, the proposal cannot be considered by the Planning Authority under the provisions of Section 254 As such, a licence cannot be granted.

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

Parks – further information required.

Roads – no objections.

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

None.

## **4.0 Planning History**

#### **4.1. Site:**

None.

#### **4.2. Relevant sites in the area:**

PA Ref: S25421/03 and ABP-311529-21 – Permission for a Section 254 Licence to install free-standing street pole with shrouded antenna.

## **5.0 Policy Context**

### **5.1. Development Plan**

#### **5.1.1. South Dublin County Development Plan 2022-2028**

The subject site is subject to the zoning objective 'LC' - 'To Protect, improve, and provide for the future development of Local Centres', under the South Dublin County Council Development Plan 2022-2028. The use class 'Public Services' is 'Permitted In Principle'.

Policy IE5: Information and Communications Technology (ICT)

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

IE5 Objective 1: To promote and facilitate the provision of appropriate telecommunications infrastructure, including broadband connectivity and other innovative and advancing technologies within the County in a non-intrusive manner.

IE5 Objective 3: To permit telecommunications antennae and support infrastructure throughout the County, subject to high quality design, the protection of sensitive landscapes and visual amenity.

IE5 Objective 4: To discourage a proliferation of telecommunication masts in the County and promote and facilitate the sharing of facilities.

IE5 Objective 5: To ensure that above ground utility boxes are sensitively located and finished to reduce their visual impact, designing out anti-social behaviour and promoting soft planting around existing and new ones where feasible.

IE5 Objective 6: To require the identification of adjacent Public Rights of Way and established walking routes by applicants prior to any new telecommunication developments and to prohibit telecommunications developments that impinge thereon or on recreational amenities, public access to the countryside or the natural environment.

IE5 Objective 7: Ensure that applications made in relation to the provision of overground telecommunications infrastructure, including planning applications and

Section 254 licence applications, take into consideration and demonstrate compliance with the 'Guidance on the Potential Location of Overground Telecommunications Infrastructure on Public Roads' (2015).

#### Section 12.11.2 Information and Communications Technology

Section 254 Licences: A Section 254 licence is required from a planning authority to place on, under, over or along a public road the following items or equipment:

a vending machine;

a town or landscape map for indicating directions or places;

a hoarding, fence or scaffold;

an advertisement structure;

a cable, wire or pipeline, overground electronic communications infrastructure and any associated physical infrastructure; a telephone kiosk or pedestal;

any other appliance, apparatus or structure, which may be prescribed as requiring a licence under this section, on, under, over or along a public road save in accordance with a licence granted by a planning authority under this section.

The Planning and Development Act, 2000 (as amended) states that: 'In considering an application for a licence under this section a planning authority, or the Board on appeal, shall have regard to

- (a) the proper planning and sustainable development of the area,
- (b) any relevant provisions of the development plan, or a 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'.

Items and equipment placed on, under, over or along a public road – such as street furniture and overground telecommunications infrastructure – have the potential to significantly impact on the quality of the environment within a given area. This includes development works regulated through Section 254 licencing requirements.

In assessing applications under Section 254 of the Planning and Development Acts, the Planning Authority, must have regard to the relevant provisions of the

Development Plan and any local area plan in place. Careful consideration should be given especially to Chapter 5 of this Plan 'Quality Design and Healthy Placemaking', in particular the sections dealing with 'The Delivery of Sustainable Neighbourhoods', 'The plan approach' and the eight principles which must be applied to new developments in the County.

Applications made under the Planning and Development Act, 2000 (as amended) in relation to the provision of overground telecommunications infrastructure, including planning applications and Section 254 licence applications, must take into consideration and demonstrate compliance with the 'Guidance on the Potential Location of Overground Telecommunications Infrastructure on Public Roads' (2015).

## **5.2. National Guidelines**

Planning and Development Act 2000, as amended. The development is considered under Section 254(1)(ee) of the Planning and Development Act 2000 as amended.

DoHELG Circular Letter PL 11/2020. This circular provided clarification in relation to the planning exemptions applicable to telecommunications works undertaken by statutory undertakers authorised to provide telecommunications services. It advises Planning Authorities that:

- Section 254 of the Act outlines the provisions in relation to the licensing of appliances and cables etc on public roads. Where development of a type specified in section 254(1) of the Act is proposed to be carried out on a public road, approval for the works is required from a Planning Authority by means of the obtaining of a section 254 licence.
- A Section 254 Licence is required for overground electronic communications infrastructure and its associated works, and that such works are exempt from planning permission.
- The exemptions for telecommunications infrastructure along public roads do not apply:
  - (a) where the proposed development is in sensitive areas where there is a requirement for Appropriate Assessment.

(b) where the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users.

Section 254(5) of the Act outlines the criteria to which the Planning Authority shall have regard in assessing such proposals:

- a) the proper planning and sustainable development of the area,
- b) any relevant provisions of the development plan, or a 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.

National Broadband Plan, DCENR, 2012. Sets out a strategy to deliver high speed broadband across the State.

Circular Letter PL07/12 – The circular updates the guidance document and specifically refers to temporary permissions, removal of separation distances from houses and schools, bonds and contributions, planning considerations related to location and design and health and safety matters, and the establishment of a register / database.

Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities, DoE, 1996. Provide guidance on, amongst other things, siting of masts. This includes, in city suburbs, to co-locate telecommunications where possible and to locate new telecommunication masts in industrial or in industrially zoned land or commercial or retail areas. The guidance states that only as a last resort, if these alternatives are not available, should free-standing masts be located in a residential area or beside schools. Further, if such a location should become necessary, sites already developed for utilities should be considered and masts and antennae should be designed and adapted for the specific location, with the support structure be kept to the minimum height consistent with effective operation.

**Design Manual for Urban Roads and Streets** – section 2.4.5 Street Furniture.



### **5.3. Natural Heritage Designations**

- 5.3.1. The site is not situated within any European Sites. There are no designated European Sites in close proximity to the site.

### **5.4. EIA Screening**

- 5.4.1. The proposed development is not listed in either Part 1 or Part 2 of Schedule 5, Planning and Development Regulations 2001 (as amended), which sets out the types and thresholds of development that requires a mandatory EIA. The proposal has also been assessed against the criteria outlined in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and the provisions of Article 109, (3) of the Regulations.
- 5.4.2. Under the provisions of Article 109, (3) of the Regulations, it is noted that the site is not located within a European site, is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site.
- 5.4.3. The proposed development is minor in nature and scale and will not require any significant ground works or construction methods. I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that after a pre-screening exercise an environmental impact assessment report for the proposed development was not necessary in this case. (See Pre-Screening Form, Appendix 1).

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The grounds of appeal can be summarised as follows:

- There is a technical justification for the infrastructure, the 3G and 4G coverage will be improved in the area. High speed wireless broadband is lacking in the area.

- There are no suitable sites for co-location in the area, table 1 and figure 3 refers. Existing sites are too far away and do not support newer 4G and 5G and in some cases 3G coverage. 4G and 5G services require a closer network of masts as effective range is only 100 metres or so.
- The site selected will ensure minimal visual intrusion.
- Pre-planning conversations with roads and planning departments raised no issues.
- The site is owned by South Dublin County Council and is part of the road network and is therefore a public road. The site is located in a wide grassed road margin and has no recreational uses and is not zoned for open space.
- The design of the infrastructure will ensure minimal visual impact, the accompanying visual impact assessment demonstrates this.
- The infrastructure will accord with all relevant health and safety requirements.
- The proposal accords with all relevant national and local policies with regard to the roll of broad band accessibility. All relevant policies and objectives at national, regional and local level are listed out at sections 2.57 to 2.82 of the grounds of appeal.
- Planning precedents are listed out at sections 2.83, where poles are located at road junctions in green areas, ABP-308857-20 is highlighted as the most relevant case on lands zoned for open space.

## **6.2. Planning Authority Response**

6.2.1. The planning authority confirms its decision.

## 7.0 Assessment

### 7.1. Introduction

7.2. According to the application documentation, the proposed development is for the installation of an 18m freestanding galvanised pole with a diameter of 406mm, with internal cables, two 300mm diameter dishes and internal antennae. Together with a ground mounted cabinet with a footprint of 1.5 sqm, height 1.9 metres, length at base of 1.3 metres and width of 0.8 metres would be installed beside the pole and would be painted green. It is also proposed to leave space for co-location opportunities on the site.

7.2.1. The proposed development is brought forward under section 254(1) of the Planning and Development Act 2000 (as amended). In their consideration of the development, under section 254(5) of the Act, the Board is required to have regard to:

- a. the proper planning and sustainable development of the area,
- b. any relevant provisions of the development plan, or a 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.

7.2.2. Having regard to these requirements, local and national planning policy, the application details, all other documentation on file and my inspection of the site, I consider that the main issues for this appeal relate to:

- Proper and Sustainable Planning and the Development Plan
- Co-location
- Road Safety
- Other Matters

### 7.2.3. Proper and Sustainable Planning and the Development Plan

7.2.4. Introduction - Section 254(5)(a) of the 2000 Act the Board is required to have regard to the proper planning and sustainable development of the area of which visual amenity is part. In addition, the Board are required to have regard any relevant

provisions of the development plan, or a local area plan, section 254(5)(a) refers. I have combined both these topics within this section of my report.

- 7.2.5. The South Dublin County Development Plan 2022-2028 sets out the overall strategy and vision for the proper planning and sustainable development of the county over the 6 year plan period and has been prepared in accordance with Part II, Chapter I of the Planning and Development Act 2000 (as amended). Appendix 1 of the Written Statement contains a Statement prepared in accordance with Section 28 (1A) of the Planning and Development Act 2000 (as amended) demonstrating how the Planning Authority in preparing the Development Plan has implemented the policies and objectives set out in Ministerial Guidelines issued under Section 28 of the Act. With reference to the Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996), Chapter 11, Section 11.4 - sets out the Council's policies on Telecommunications and implements the relevant policies and objectives of these Guidelines.
- 7.2.6. The development plan includes Policy IE5: Information and Communications Technology (ICT) and IE5 Objective 7 specifically refers to Section 254 licence applications. Chapter 12 of the development plan focuses on implementation and monitoring and section 12.11.2 Information and Communications Technology states that in the assessment of Section 254 licences specific regard should be had to Chapter 5 of the Plan 'Quality Design and Healthy Placemaking'. In very broad terms chapter 5 of the plan seeks to ensure that new development contributes in a positive manner to the character and setting of an area.
- 7.2.7. The subject site is subject to the zoning objective 'LC' - 'To Protect, improve, and provide for the future development of Local Centres', under the South Dublin County Council Development Plan 2022-2028. The use class 'Public Services' is 'Permitted In Principle'. However, the area in which the site is located, has the character and attributes of a public open space. The area is attractive, well maintained and a positive feature of the area. The applicant points out that the site is located on lands that are zoned LC, not open space and the development should be permitted.
- 7.2.8. I note that the planning authority had some concerns about the visual impact of the proposal and what impact it would have on existing vegetation. The applicant has submitted a photomontage report with the grounds of appeal and its contents are

noted, specifically that the images used show trees without leaves. The character of the area is dominated by fairly low-density housing set well back from the roads. There are consequently large areas of green space along the margins of the road and these tend to be generously planted with mature trees and shrubs. It is likely that most services run underground and so there are no noticeable wires between telegraph poles. There are lamp standards at regular intervals along the road, taller along the Old Ballycullen Road and less so in the housing estates. The proposed pole is tall at 18 metres and this would be unusual for the area, this can be seen in the imagery presented by the applicant. In addition, I note that a similar telecoms pole is located 80 metres to the south west of the site and this does not appear in any of the viewpoints selected by the applicant.

- 7.2.9. From the information on file and the character of the receiving environment, I have some concerns that the proliferation of telecoms structures at this general location could become a visual amenity issue. The existence of lamp standards at regular intervals along the road side is to be expected for the type and character of the area. However, the emergence of larger diameter and taller poles could become a discordant feature on the streetscape, such as it is. For this reason, I am not satisfied that an additional slim line structure of the design and scale proposed is appropriate at this location where only lamp standards and limited street signage is the norm. Hence, the proposed development would not accord with Chapter 5 of the Plan 'Quality Design and Healthy Placemaking', and impact in a negative way on the character and setting of the area.

### **7.3. Co-location**

- 7.3.1. In accordance with section 254(5)(c) of the 2000 Act, the Board is required to have regard to the number and location of existing appliances, apparatuses or structures on, under, over or along the public road. The applicant has indicated that they have already conducted research in the area and no suitable infrastructure is available. I also note that the applicant has identified a coverage blackspot that they wish to fill with the provision of the development they now propose. I have examined the information prepared by the applicant with respect to co-location opportunities, the technical limitations of 4G/5G leading to a requirement for closer pole locations and the desire to fill a coverage blackspot. In their grounds of appeal the applicant states that location number 1 is approximately 20 metres to the south east of the subject

site and it is unknown if sharing is possible. However, I am not convinced by the data presented by the applicant with respect to their technical justification for the development proposed. I observed that an existing similarly designed pole (15 metres in height) and equipment cabinet is located 80 metres to the south west of the appeal site, ABP-311529-21 refers. Permission was granted by the Board in April 2022 for a period of five years, and the pole and equipment cabinet are now in situ. This could be the same pole referred to as number 1 in table 1 and figure 3 of the applicant's grounds of appeal, though this is not entirely clear from the information presented by the applicant.

- 7.3.2. I am not satisfied that the applicant has included the most up to date information with regards to co-location opportunities and coverage blackspots. Based upon my observations, I suggest that opportunities for co-location could exist and should be examined in greater detail or determined with certainty that coverage is already adequate in the area. I am not satisfied that it is either appropriate or sustainable to position two similar forms of telecoms infrastructure so close together without exploring all opportunities for co-location or a more suitable site altogether if in fact there is a coverage deficit. Permission should be refused for the licence based upon the lack of up to date and relevant information with respect section 254(5)(c) of the 2000 Act.

#### **7.4. Road Safety**

- 7.4.1. In accordance with section 254(5)(d) of the 2000 Act, the Board is required to have regard to the convenience and safety of road users including pedestrians. The planning authority acknowledge that road safety and convenience will not be adversely affected by the position and type of development proposed. However, permission was refused on the basis that the proposed site did not comprise land identified as a road, margin or verge as defined under Section 2 of the Roads Act 1993, under the provision of Section 254 of the Planning and Development Act 2000, as amended, the planning authority maintain that a licence cannot be granted in such circumstances. The applicant disagrees and states that the site does form part of a road as defined by the Roads Act. In their view, the site is located along a road and therefore Section 254 applies to their case.

- 7.4.2. The planning authority raise an interesting perspective on Section 254 licence applications and whether they can consider the applicant's proposal at all because it is not part of a road. The applicant believes that the site does form part of a road and should be considered as such.
- 7.4.3. For clarity, Section 254 of the Planning and Development Act requires a licence to be granted for the relevant development on, under, over or along a public road, subject to certain criteria. In this instance the site is located on lands zoned LC in the development plan and the adjacent roads are not zoned. The site is positioned behind a gateway entrance feature to a housing estate, the gate pier includes fencing and this separates the site from the road edge. According to the plans submitted, the site is 8.2 metres from the back of the footpath and 10.2 metres from the road edge. These are not insignificant distances and the physical separation of the site from the road by a gate pier and fence adds to the detachment of the site from the road. The operative phrase of Section 254 is the term 'along' and what that exactly means in practice is not set out in the Planning and Development Act. The planning authority have enlisted the help of the Roads Act to determine what a road is and this is helpful up to a point. However, I consider that it is left up to the merits of each case to determine what is meant by the term 'along' a public road. In this instance, the road in question is a residential road with a footpath. There are large areas of linear amenity areas along roads in the area and in some cases, these are zoned as open space in the development plan. The appeal site is located behind a fence on green space zoned local centre, more than 8 metres from the nearest road. Given the open space character of the area, the distance from the road edge and the fence and gate pier that physically separates the site from the road, I am not satisfied that this site can be considered under the provisions of Section 254 of the Planning and Development Act, as amended.
- 7.4.4. In summary, the planning authority have indicated that the proposed development would not impact the convenience and safety of road users including pedestrians and I agree with this view. However, it should be noted that the appeal before the Board does not satisfy the provisions of Section 254 of the Planning and Development Act and thus, it may not be within the power of the Board to grant permission for a licence if it is agreed that the site is not located along a road.

## 7.5. Other Matters

- 7.5.1. Supporting Information - The applicant prepared a detailed and comprehensive grounds of appeal, much of the information repeated and reiterated the initial documentation that was submitted with the licence application to the planning authority in the first place. I am satisfied that I have considered all relevant material as it pertains to the criteria for a Section 254 application under the Planning and Development Act. No further assessment is required.

## **8.0 Recommendation**

- 8.1. I recommend that a licence be refused for the proposed development.

## **9.0 Reasons and Considerations**

1. Having regard to the government's guidelines on Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities, DoE, 1996, the policies and objectives of the South Dublin County Development Plan 2022 - 2028, the location of the proposed development within an urban area and where existing telecommunications structures are located less than 2 kilometres from the site and as close as 80 metres from the site, it is considered that insufficient technical justification and evidence has been provided in respect of alternative sites, to support the location of the development. IE5 Objective 4 of the South County Development Plan 2022 – 2028 seeks to discourage a proliferation of telecommunication masts in the County and promote and facilitate the sharing of facilities. It is considered, therefore, that the proposed development would be contrary to government guidelines, to County Development Plan policy, lead to an undesirable increase in the number and location of existing appliances, apparatuses or structures on, under, over or along the public road, and consequently be contrary to the proper planning and sustainable development of the area.
2. The site of the proposed development is located on space that is informally used as public open space, it is maintained and used as such. Lamp standards are positioned at regular intervals and an existing telecoms monopole structure is located in close proximity. It is considered that the proposed development would constitute a visually obtrusive feature in an area



where similar street furniture features are limited and logically spaced apart. The proposed development would have an adverse visual impact on the surroundings and character of the area and conflict with IE5 Objective 1, that seeks to promote and facilitate the provision of appropriate telecommunications infrastructure, including broadband connectivity and other innovative and advancing technologies within the County in a non-intrusive manner and consequently not align with Chapter 5 of the South Dublin County Development Plan 2022-2028 that's seeks to ensure and promote quality design and healthy placemaking. The proposed development would, thereby, be contrary to the proper planning and sustainable development of the area.

**Note:** The Board wishes to advise the applicant that as the site is not located on, under, over or along a public road, as set out under the provisions of Section 254 of the Planning and Development Act 2000, as amended, a licence cannot be granted by the Board in this instance.

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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Stephen Rhys Thomas  
Senior Planning Inspector

6 February 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-318653-23		
<b>Proposed Development Summary</b>	Streetworks solution to address identified mobile and wireless broadband coverage blackspots.		
<b>Development Address</b>	Woodstown Avenue, Ballycullen, Co. Dublin		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	Y
		<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	N		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
		<b>Conclusion</b>	
<b>No</b>		Not within a class.	Not within a class. No EIAR or Preliminary Examination required
<b>Yes</b>		N/A	Not within a class. Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_