



An
Bord
Pleanála

Inspector's Report

ABP-319352-24

Development	Construction of a 18m dual operator pole and all associated site works.
Location	R875 / Marian Park Road, Cloon More, Tralee, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	03/2023/254
Applicant(s)	Emerald Tower Limited
Type of Application	Section 254 License
Planning Authority Decision	Refusal of a license
Type of Appeal	First Party
Appellant(s)	Emerald Tower Limited
Observer(s)	None
Date of Site Inspection	19 August 2024
Inspector	Claire McVeigh

1.0 Site Location and Description

- 1.1. The subject site is located within a small amenity green space/green buffer at the roundabout junction of the R875 and Marian Park Road, Cloon More, Tralee, Co. Kerry.
- 1.2. There are four semi-mature trees within the amenity space/green buffer and a low wall bounding this area. A streetlight is positioned within this green space close to the northeastern edge. A pedestrian pathway runs to the west of the subject site from Marian Park to Boherbee (R875). To the opposite side (western side) of this pedestrian path are several utility cabinets positioned against a high blank wall behind which are some very tall trees close to the vehicular entrance of the adjoining property.
- 1.3. I note for the Board that the application cover letter, planning statement and the appeal documentation contains errors in respect to the description of the site location as Martin Park Road and the R876.

2.0 Proposed Development

- 2.1. The proposed development comprises the installation of a 18m high 'streetworks pole', coloured grey, for the co-location of two separate operators' equipment within the same pole, to provide broadband and data services. The lead operator is Eir Mobile (Eircom Limited). A second operator has not been identified.
- 2.2. The cabinets (1 and 2) are proposed to be 1.9m in height and cabinet no. 1 is 1.3m wide and cabinet no. 2 is 1.9m wide. Both cabinets are 0.8m deep and proposed to be a dark fir green colour.
- 2.3. I note that the site layout plan (Drawing no. KY-4250-01-PD-02) indicates an area immediately adjacent to the subject site, outside of the red line boundary for the proposed location of 2 outdoor cabinets to serve a future operator co-locating on the same pole.
- 2.4. The following reports were submitted with the application:
 - Planning Statement incorporating environmental considerations.
 - Telecommunications Development Photomontage Report.

- Declaration in respect to compliance with International Commission for Non-Ionising Radiation Protection (ICNIRP) - Radio Emissions Statement (eir).
- Certificate of insurance.

3.0 Planning Authority Decision

3.1. Decision

On the 30 January 2024 the planning authority refused the section 254 license application for the following two reasons:

1. It is considered that the proposed development would be premature pending the finalisation of the revised junction layout at this location and would therefore be contrary to Objective TR 112 of the Tralee Town Plan.
2. It is considered that the proposed development would constitute a highly obtrusive feature at this location and would be seriously injurious to the visual and public realm amenities of the area. The proposal would contravene 14-79 of the Kerry County Development [*Plan*] 2022-2028 and Objective TR8 of the Tralee Town Plan. The proposal would set an undesirable precedent and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The main considerations are visual impact and impact on the proposed Clash to Ballymullen Link Road.
- The proposal is premature as the land take for revised junction layout at the northern terminus of the Clash to Ballymullen Link Road is unknown. Proposal contrary to objective TR112 of the Town Plan.
- Highly visible location and the proposed would have a significant negative impact on the existing green area, reducing the value of this public realm space contrary to Objective TR8.

- Having regard to the nature and scale of the proposals and the distance of the site from any Special Area of Conservation (SAC) or Special Protection Area (SPA) considers there is not likely potential for significant effect to the Natura 2000 sites, and AA not required.
- Not a Class under Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended) Class. Proposal is not one which requires EIA screening or EIA.

3.2.2. Other Technical Reports

- Tralee Municipal District Engineer – It is anticipated that this junction will be redesigned to include Active Travel measures approximately in the next 12 months. This application is considered to be premature until such time as the redesign of the junction has progressed through the relevant planning regulatory requirements be it Part 8 or Section 38.
- The current junction layout is included in the Tralee Transportation Study with a proposal to replace the existing roundabout with a signalised junction. Potentially this new layout could be under construction in two years time subject to further SIG monies being secured in 2024/2025.
- A revised junction layout will require active travel facilities further increasing its footprint. At this time no design has been undertaken and the required land take is unknown. This application would be premature.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

None.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

Road Network – Section 14.4

Table 14.3: Priority Roads Infrastructure Projects – identifies the non-national project Tralee Inner Relief Road – Clash to Ballymullen Phase 2.

Road Network

It is an objective of the Council to:

KCDP 14-27 Provide or facilitate the sustainable provision of all road infrastructure projects set out in Table 14.3 with priority given to infrastructure serving the Key Towns.

KCDP 14-32 Reserve lands and prohibit development in areas identified for both the immediate and longterm provision and improvement of roads throughout the County and the construction of roads as indicated in Table 14.3.

Digital Connectivity – Section 14.9

It is the policy of the Council to:

- Promote the development of Smart County and Smart Towns as well as Smart Villages.
- Support the co-ordinated and focused sustainable development and extension of broadband infrastructure throughout the County at appropriate locations to ensure economic competitiveness for the enterprise and commercial sectors and in enabling more flexible work practices e.g., remote working in hubs in towns and villages.
- Facilitate the sustainable development of a modern efficient telecommunications network serving the County.
- Achieve a balance between facilitating the sustainable provision of telecommunications infrastructure in the interests of social and economic progress and sustaining residential amenity and environmental quality.

14.9.1 Telecommunications & Broadband

KCDP 14-71 Facilitate the sustainable delivery of high-speed, high-capacity digital and mobile infrastructure and support the continued investment and the delivery of ICT infrastructure, broadband networks and digital broadcasting in the County in line with the National Broadband Plan for Ireland.

KCDP 14-73 Support the sustainable provision of modern and innovative telecommunications infrastructure at appropriate locations.

KCDP 14-79 Achieve a balance between facilitating the provision of telecommunication infrastructure in the interests of social and economic progress and sustaining residential amenity and environmental quality.

KCDP 14-80 Ensure that the location and provision of telecommunication infrastructure should minimise and/or mitigate any adverse impacts on communities, public rights of way and the natural environment

Volume 2 – Town Development Plans

At the time of writing my report the interactive legend on the Kerry County Development Plan Map Browser was not active but on review of Volume 2 Map D Tralee Town it appears that the subject lands are zoned M4 Built up area.

Located within the Mitchels/Boherboy Regeneration Area Volume 2 Map D.

Indicative Road – Clash to Ballymullen Link Road Volume 2 Map D.

Objective TR8 Strengthen Tralee's sense of place and identify as a highly attractive place to live, work, study and visit with the continuation of transformative urban regeneration and public realm spaces.

Objective TR112 Complete the Clash to Ballymullen Link Road.

Volume 6 – (1) Development Management Standards & Guidelines

1.14.1 Telecommunications

The Council recognises the importance of the need for high quality communications and information technology networks in assuring the competitiveness of the County's economy and its role in supporting regional and national development. The advantages of a high-quality ICT infrastructure must however be balanced against the need to safeguard the rural and urban environment.

In evaluating applications for telecommunication installations, the Council will have regard to “Telecommunications Antennae & Support Structures Guidelines for Planning Authorities” (1996) and Department Circular PSSP 07/12.

The following shall be taken into account when preparing a planning application:

- Co-location of such facilities on the same mast or cabinets by different operators is favoured to discourage a proliferation, where possible. Where new facilities are proposed applicants will be required to satisfy the Council that they have made a reasonable effort to share facilities or to locate facilities in clusters.
- Every effort shall be made to locate telecommunication masts in non-scenic areas or in area where they are unlikely to intrude on the setting of, or views to/from national monuments, protected structures or sensitive streetscapes. The preferred location for telecommunication antennae is in industrial estates or areas zoned for industrial use or in areas already developed for utilities
- In the event of the discontinuance of any mast installation the mast and its equipment shall be removed from the site and the land reinstated.
- All planning applications shall be required to furnish a statement of compliance with the International Radiation Protection Association (IRPA) Guidelines or the equivalent European Pre-Standard 50166-2 in the interest of health and safety.
- Every effort should be made to located new telecommunication masts in existing compounds or adjacent to existing masts.
- When locating on greenfield sites the mast should be away from existing residential properties.
- The preferred location for masts and antennae is in industrial estates, attached to industrial buildings or other commercial buildings.

5.2. Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities (1996)

Section 4.3 of the 1996 Guidelines refers to visual impact and states it is among the more important considerations which have to be taken into account in arriving at a decision on a particular application. It advises that great care will have to be taken when dealing with fragile or sensitive landscapes and that proximity to listed buildings (protected structures), archaeological sites and other monuments should be avoided. In most cases, the Guidelines acknowledge that the applicant will only have limited flexibility as regards selecting a location given the constraints arising from radio planning parameters. Visual impact will, by definition, vary with the general context of the proposed development.

Section 4.3 also recommends that in the vicinity of larger towns and in city suburbs operators should endeavour to locate in industrial estates or in industrially zoned land. The possibilities offered by some commercial or retail areas should be explored whether as rooftop locations or by way of locating “disguised” masts. Only as a last resort, and if the alternatives are either unavailable or unsuitable, should free standing masts be located in a residential area. 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. The proposed structure should be kept to the minimum height consistent with effective operation and should be monopole (or poles) rather than a latticed tripod or square structure.

5.3. Circular Letter PL07/12

Circular Letter PL07/12 revised elements of the 1996 Guidelines under Section 2.2 to 2.7. It advises Planning Authorities to:

- Cease attaching time limiting conditions or issuing temporary durations to telecommunications masts, except in exceptional circumstances.
- Avoid including minimum separation distances between masts or schools and houses in Development Plans.
- Omit conditions on planning permissions requiring security in the form of a bond/cash deposit.

- Not include monitoring arrangements on health and safety or to determine planning applications on health grounds.
- Include waivers on future development contribution schemes for the provision of broadband infrastructure.

5.4. **Circular Letter PL11/2020**

Circular Letter PL11/2020 'Telecommunications Services – Planning Exemptions and Section 254 Licences' was issued in December 2020. 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.
- 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. However, while a section 254 licence is required for such works, section 254(7) further provides that development carried out in accordance with a licence issued under section 254 shall be exempted development for the purposes of the Act i.e. it is therefore exempted 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.

5.5. Natural Heritage Designations

The subject site is approximately 2 km from the Special Area of Conservation; Tralee Bay and Magharees Peninsula, West to Cloghane SAC [002070]/ Proposed Natural Heritage Area (NHA): Tralee Bay and Magharees Peninsula, West to Cloghane [002070] and Special Protection Areas: Tralee Bay Complex SPA [004188]. The Special Area of Conservation: Ballyseedy Wood SAC [002112] is approximately 1.8km from the subject site.

6.0 EIA Pre-Screening

The proposed development comprising the telecommunications structure and associated cabinets does not constitute a Class of development listed in Schedule 5, Part 1 or Part 2 of the Planning and Development Regulations 2001, as amended. As such, EIA screening is not required for this development project. Please see Appendix 1: Form 1 attached.

7.0 The Appeal

7.1. Grounds of Appeal

The grounds of the first party appeal are principally a rebuttal of the two reasons for refusal as summarised below:

Addressing reason for refusal no. 1:

- The proposed development site is situated on the southwest side of the roundabout and is east of the indicative road proposed to run from Marian Park Road south creating a new connection with the N86. This route first emerged in the 2004 Tralee Masterplan and has yet to be implemented.
- The proposal is suitably setback for the indicative road, as outlined to date, and asks that the Board overturn this refusal as it would undermine future development of the town specifically this regeneration area.

- Planning applications identified that have been granted permission within the vicinity of the proposed route. Planning precedence in this location to support development without impact to the road link.
- Highlights internal report from the Roads Department stating no objection to the proposed development subject to condition set out in report dated 30th January 2023.
- Would be willing to accept a condition that the proposed be moved if required.

Addressing reason for refusal no. 2:

- The proposed location is a grassed area forming part of the existing roadside and the development plan identifies this site as 'built up area' and not public open space. The impact on public realm is overstated and misrepresents the existing baseline character here.
- The proposed development whilst visible would have a negligible impact on its receiving environment, refer to submitted 4 no. photomontages and report submitted.
- The proposed development would have minimal visual impact at this location given it is similar to the existing street infrastructure design.

7.2. Planning Authority Response

- None.

7.3. Observations

- None.

8.0 Assessment

- 8.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report/s of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Impact on priority road infrastructure project
- Impact on visual amenities

8.2. *Impact on priority road infrastructure project*

- 8.2.1. The subject site sits proximate to the indicative priority road infrastructure project (Map D Tralee Town Plan), as noted in section 5.0 of my report. This indicative road infrastructure forms part of the Tralee Inner Relief Road – Clash to Ballymullen Phase 2, as contained within the listed priority road infrastructure projects Table 14.3 of the development plan written statement.
- 8.2.2. I note that a 12-month redesign timeframe has been indicated by the Tralee Municipal District Engineer to accommodate active travel measures into the redesign of the junction. I believe additional space beyond that as indicatively shown on the development plan maps will be required to accommodate a comprehensive proposal incorporating active travel measures. I note for the Board that the monopole structure will require additional cabinets to facilitate the second operator and that these cabinets are not included for in the application boundary, as defined by the red line. As such, the section 254 licence application as currently presented would not facilitate the use of the monopole by two operators.
- 8.2.3. On balance, I consider that to permit the street licence for the installation of the telecommunications mast and associated cabinets for one operator at this time, given the relatively short-term timeframe identified by the Municipal District Engineer, would result in constraints to the comprehensive redesign of the junction and its environs of this priority road infrastructure project. I am of the view that the proposal would be contrary to development plan objective KCDP 14-32 which seeks to *“Reserve lands and prohibit development in areas identified for both the immediate and long-term provision and improvement of roads throughout the County and the construction of roads as indicated in table 14.3”*.
- 8.2.4. I acknowledge the planning history provided by the applicant to demonstrate permission granted in the vicinity of the indicative Tralee Inner Relief Road – Clash to Ballymullen Phase 2 and previous coordination between the planning authority and the relevant applicants. In respect to planning register reference: 19/272 relating to the provision of a 600 pupil post primary school I note for the Board that this application includes the provision of a 2-way road to be handed over to the council

on completion. I also note that 'Site Layout Master Sheet' for the Large Scale Residential (LRD) application register reference 23/60150 allows for future connection with the link road (Phase 2). I am of the view, however, that given the proposal sits within the immediate environs of the four-armed roundabout junction and critical northern terminus of the Clash to Ballymullen Link Road that to approve the section 254 licence in such proximity to the junction and the existing pedestrian pathway would constrain the active travel redesign of same.

8.2.5. The applicant refers to an internal roads report dated 30th January 2023 which states no objection. A copy of this report is not on the file before me for assessment, I cannot therefore verify the content of the internal report referred to, however given the date of the report predates the making of the licence application I do not consider reference to same to be a valid consideration to the subject application.

8.2.6. In conclusion on this point, I am of the opinion that the proposed development would be premature pending the redesign and finalisation of the revised junction layout, including for active travel measures, at this location and would be contrary to KCDP 14-32 and roads and infrastructure Objective TR112 in the Tralee Town Plan to complete the Clash to Ballymullen Link Road.

8.3. *Impact on visual amenities*

8.3.1. The subject site is zoned M4 'built up area' and is located adjacent to the four-armed roundabout junction of Boherbee (R875), Marian Park Road, Quill Street and Clash Road. There is a significant array of roads signage and associated roads infrastructure within the immediate area including traffic lights, lamp standards and utility cabinets.

8.3.2. Having regard to the submitted visual impact assessment and supporting photomontages I note that the magnitude of change ranges from negligible to medium, in viewpoint 2 (VP2) from Marian Park Road, but that the level of effect is determined to be moderate/low to low/negligible. I would concur with the findings of the viewpoint analysis that the visual impact would not be considered significant and that the proposed development is able to assimilate into the existing environment given the extent of existing vertical structures and the sites context.

8.3.3. Taking into account the M4 'Built up Area' zoning of the site, the immediate context of roads infrastructure and existing street trees and given the planned future junction

redesign which would likely result in a significant change to this green buffer space, I am of the view that, notwithstanding the highly visible nature of the monopole structure at this prominent location, the visual impact of same would not be of significance or so detrimental to the established visual amenities of the area to warrant a refusal.

9.0 AA Screening

- 9.1. I have considered the 18m dual operator pole and associated equipment cabinets in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is approximately 2 km from the Special Area of Conservation; Tralee Bay and Magharees Peninsula, West to Cloghane SAC [002070] and Special Protection Areas: Tralee Bay Complex SPA [004188]. The Special Area of Conservation: Ballyseedy Wood SAC [002112] is approximately 1.8km from the subject site.

The proposed development is within an urban area and comprises the installation of a street works pole for the co-location of two separate operators' equipment within the same pole to provide high speed broadband and data services.

- 9.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:

- Nature of works
- Location-distance from nearest European site and lack of connections
- Taking into account screening determination by the planning authority.

- 9.3. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is, therefore, not required.

10.0 Recommendation

I recommend that a licence under Section 254 of the Planning and Development Act, 2000 (as amended) be refused for the reason and considerations as set out below.

11.0 Reasons and Considerations

1. Development of the kind proposed would be premature pending the determination by the planning authority of a road layout for the area or any part thereof, including active travel measures. Furthermore, the proposed development would result in constraints to the comprehensive redesign of the junction and its environs of the identified priority road infrastructure project 'Tralee Inner Relief Road – Clash to Ballymullen Phase 2' contrary to Kerry County Development Plan 2022-2028 objective KCDP 14-32 which seeks to 'reserve lands and prohibit development in areas identified for both the immediate and long-term provision and improvement of roads throughout the County and the construction of roads as indicated in Table 14.3'.

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.

Claire McVeigh
Planning Inspector

31 December 2024

Appendix 1: Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	319352-24		
Proposed Development Summary	18m dual operator pole, associated equipment together with ground-based equipment cabinets and all associated site development works for a wireless data and broadband services.		
Development Address	R875/ Marian Park Road, Cloon More, Tralee, Co. Kerry		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	√
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	Tick/or leave blank		
No	Tick or leave blank	√	No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes	Tick/or leave blank		

No	Tick/or leave blank		
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	Tick/or leave blank		

5. Has Schedule 7A information been submitted?		
No	√	Pre-Screening determination remains as above (Q1 to Q2)
Yes		

Inspector: _____ **Date:** _____