

# Comhairle Chontae Atha Cliath Theas

**PR/0307/22**

## Record of Executive Business and Chief Executive's Order

**Reg. Reference:** S25421/23                      **Application Date:** 02-Nov-2021  
**Submission Type:** S254 Licence              **Registration Date:** 02-Nov-2021  
Application

**Correspondence Name and Address:** Emma Breen, Charterhouse Infrastructure  
Consultants Unit 2, Listowel Business Development  
Centre, Clieveragh Industrial Estate, Listowel, Co.  
Kerry

**Proposed Development:** 15 metre high telecommunications street-works  
structure.

**Location:** Stocking Avenue, Ballycullen, Co. Dublin

**Applicant Name:** Vantage Towers Ltd.

**Application Type:** S254 Licence

(COS)

### **Site Description**

The site is located to the north of the footpath along the northern side of Stocking Avenue.

### **Licence Application Proposal**

A licence is sought by Vantage Towers Ltd. to erect a 15 m high telecommunications street-works structure.

### **Consultations**

EHO – no report received.

Irish Water – no objection subject to conditions.

Public Realm – no additional comments to make.

Roads – no objection subject to conditions.

Water Services – no objection subject to conditions.

Enterprise Promotion – no report received.

Asset Management – no report received.

### **Legislation**

The license application has been made under Section 254 of the Planning and Development Act, 2000 as amended. Section 254(5) of the Planning and Development Act as amended outlines the criteria to which the Planning Authority shall have regard:

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

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- (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.

### **Relevant National Policy**

*Circular PL 07/12 - Telecommunications Antennae & Support Structure Guidelines (March 2021)*

*Circular PL 11/2020 – Telecommunications Services – Planning Exemptions and Section 254 Licences*

*Planning Circular letter PL 07/2021 - Planning and Development Act 2000 (Section 254 - Overground Telecommunication Cables) Regulations 2021 - S.I. 422 of 2021*

### **Relevant Policy in South Dublin County Council Development Plan 2016-2022**

*7.4.0 Information and Communications Technology*

*Policy IE4 Information and Communications Technology (ICT)*

*It is the policy of the Council to promote and facilitate the sustainable development of a high quality ICT network throughout the County in order to achieve balanced social and economic development, whilst protecting the amenities of urban and rural areas.*

*IE4 Objective 1:*

*To promote and facilitate the provision of appropriate telecommunications infrastructure, including broadband connectivity and other innovative and advancing technologies within the County.*

*IE4 Objective 2:*

*To co-operate with the relevant agencies to facilitate the undergrounding of all electricity, telephone and television cables in urban areas wherever possible, in the interests of visual amenity and public health.*

*IE4 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.*

*IE4 Objective 4:*

*To discourage a proliferation of telecommunication masts in the County and promote and facilitate the sharing of facilities.*

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### *IE4 Objective 5:*

*To actively discourage the proliferation of above ground utility boxes throughout the County and to promote soft planting around existing ones and any new ones that cannot be installed below the surface to mitigate the impact on the area.*

### *IE4 Objective 6:*

*To require the identification of adjacent Public Rights of Way and established walking routes by applicants prior to any new telecommunication developments (including associated processes) and to prohibit telecommunications developments that impinge thereon or on recreational amenities, public access to the countryside or the natural environment.*

### *Section 11.6.2 Information and Communications Technology*

*In the 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) and Circular Letter PL 07/12 issued by the DECLG (as may be amended), and to other publications and material as may be relevant in the circumstances,*
- *On a map, the location of all existing telecommunications structures within a 2km radius of the proposed site, stating reasons why (if not proposed) it is not feasible to share existing facilities having regard to the Code of Practice on Sharing of Radio Sites issued by the Commission for Communications Regulation (2003),*
- *Degree to which the proposal will impact on the amenities of occupiers of nearby properties, or the amenities of the area (e.g. visual impacts of masts and associated equipment cabinets, security fencing treatment etc) and the potential for mitigating visual impacts including low and mid-level landscape screening, tree-type masts being provided where appropriate, colouring or painting of masts and antennae, and considered access arrangements, and*
- *The significance of the proposed development as part of the telecommunications network.*

### Assessment

The main issues for consideration are:

- Zoning and Council Policy
- Siting of the Proposed Overground Electronic Communications Infrastructure
- Roads
- Services
- Public Realm

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### *Zoning and Council Policy*

The proposed location of the development is to the north of the existing northern footpath and cycleway to along Stocking Avenue. **The site is located within open space zoning objective 'OS': 'preserve and provide for open space and recreational amenities'. The site is not within an area that is taken in charge.**

Council policy is generally supportive of sustainable development of ICT infrastructure in the County subject to protecting the amenities of urban and rural areas. Section 11.6.2 of the County Development Plan sets out requirements that applicants shall demonstrate in the consideration of such proposals.

The applicant has submitted the following:

- In their Planning Statement a rationale for selecting this location, which is due to inadequate current coverage, existing infrastructure being inadequate to address this, and taking account of technological and planning considerations.
- Figure 2 of the submitted report shows existing structures in relation to the subject site. However, it is not clear whether a 2 km radius has been applied and whether all existing structures within a 2 km radius have been considered. For those that the applicant has considered they are deemed not suitable due to their location and type of structure (street-works not suitable for sharing). **It should be clarified whether all existing structures within a 2 km radius have been considered.**
- Plans and elevational drawings of the proposed development. Visual impact is further assessed in this report below.

### *Siting of the Proposed Overground Electronic Communications Infrastructure*

The licensing provisions are set out in Section 254 of the Planning and Development Act 2000, as amended. This requires persons seeking to erect overground telecommunications infrastructure to obtain a licence from a planning authority where it is intended to **erect such infrastructure on, under, over or along a public road.**

Section 2 of the Act states that "public road" has the same meaning as in the Roads Act, 1993. Section 2 of the Roads Act 1993 states:

**"public road" means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority.**

Section 2 of the Roads Act states:

*"road" includes - (a) any street, lane, footpath, square, court, alley or passage, (b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,*

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- (c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and*
- (d) any other structure or thing forming part of the road and—*
- (i) necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment, or*
- (ii) prescribed by the Minister.*

The Planning Authority considers that the proposed location does not come within the definition of a public road, as it is located outside the area which has been taken in charge by Council as the public road. Therefore, the proposed development cannot be considered under Section 254 licence and should be refused.

### ***Roads***

The Roads Department has reviewed the proposed development and has no objection subject to conditions relating to construction traffic management, no obstruction of public footpaths/cycle ways and location of underground services and impact on these.

The Roads Department, however, are also of the opinion that the proposed site is located outside the public road that is taken in charge.

### ***Services***

Water Services and Irish Water have reviewed the proposed development and have no objections subject to standard conditions.

### ***Public Realm***

The Public Realm Section has reviewed the application and has additional comments to make.

### ***Appropriate Assessment***

Having regard to the scale and nature of the development proposed and the distance from Natura 2000 sites, it is considered that the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site, therefore Stage 2 Appropriate Assessment is not required.

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### **Conclusion**

The proposed development cannot be granted under licence as the site does not come within the definition of a 'Public Road'.

### **Recommendation**

I recommend that a decision to Refuse an S254 Licence be made under the Planning & Development Act, 2000 (as amended) for the reasons set out in the Schedule hereto:-

## **SCHEDULE**

### **REASON(S)**

1. On the basis of the information submitted with the application, the Planning Authority is not satisfied that the proposed siting of the telecommunications infrastructure is over or along a public road in accordance with the requirements of Section 254 of the Planning and Development Act 2000, as amended, but is on zoned open space and outside of the area taken in charge for the public road. Therefore, the Planning Authority cannot grant a licence for the proposed development in such circumstances.

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**REG. REF. S25421/23**

**LOCATION: Stocking Avenue, Ballycullen, Co. Dublin**

*jjohnston*  
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**Jim Johnston,**  
**Senior Executive Planner**

**ORDER:** A decision pursuant to Section 254 of the Planning & Development Act 2000 (as amended) to Refuse a Licence for the above proposal for the reasons set out above is hereby made.

**Date:** 9/3/22

  
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**Eoin Burke, Senior Planner**