

Comhairle Chontae Atha Cliath Theas

PR/0411/22

Record of Executive Business and Chief Executive's Order

Reg. Reference: S25421/25 **Application Date:** 18-Nov-2021
Submission Type: S254 Licence Application **Registration Date:** 18-Nov-2021

Correspondence Name and Address: Padraig Herlihy, National Broadband Ireland Unit
3009, Lake Drive, Citywest Business Campus,
Dublin 24

Proposed Development: Erection of new overground fibre optic cables on
existing timber poles.

Location: DA015 (2) - Blessington, Co. Dublin

Applicant Name: National Broadband Ireland

Application Type: S254 Licence

Site Description:

The application refers to an area that the applicant has labelled "DA015". No identifiable address is provided. This is a mapped area between Kildare, Wicklow and South Dublin Counties and which, within the county of South Dublin, includes Tallaght, lands to the south and west of Tallaght, and lands to the north as far as Clondalkin and Ballymount. The map associated with the application includes a number of red lines across the county which adhere to cabling.

Licence Application Proposal

The erection of new overground fibre optic cables on existing timber poles.

Consultations

Broadband Officer	Correspondence Received.
EHO	No report received.
Roads	No report received.
Public Realm	No comment.
Irish Water	No objection, subject to conditions.
Water Services	No objection, subject to conditions.

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,
- (a) 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.

Other Relevant Documents

Rollout of New Overground Telecommunications Infrastructure for the National Broadband Project - Guidance on the Process of Engagement between NBI and Local Authorities on the Application for Section 254 Licences, Local Government Management Association, Local Authorities Ireland and County and City Management Association (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.

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IE4 Objective 4:

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

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
- Visual Impact and Residential Amenity
- Consideration of Alternative Sites
- Roads

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- Public realm
- Services and drainage

Zoning and Council Policy

Council policy is generally supportive of sustainable development of ICT infrastructure in the County subject to protecting the amenities of urban and rural areas. The National Broadband Plan includes works to rollout broadband access to rural areas by National Broadband Ireland (the applicant).

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, (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 applicant has not provided this information as the applicant has not provided maps of sufficient detail. It is noted that the application is for the provision of cabling on existing timber poles.

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Visual Impact, Residential Amenity and Consideration of Alternative Sites

The application is for cabling over existing structures.

Roads

The Roads Department has not provided a report.

Public Realm

The Public Realm Department has stated no comment.

Water

The Environmental Services Department has stated no objection subject to compliance with Part H of the Building Regulations (Drainage and Wastewater disposal). Irish Water has stated no objection subject to connection agreements where necessary. As the application is for cabling only, these do not appear to be necessary conditions.

Screening for Environmental Impact Assessment

Having regard to the modest nature of the proposed development, and the distance of the site from nearby sensitive receptors, there is no likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Screening for Appropriate Assessment

The applicant has provided an Appropriate Assessment Screening Report referring to 190.7km of proposed additional overhead cables, contrary to the figure of 6375 metres quoted in schedule 2 of the applicant's cover letter. Nonetheless, due to the minor and localised nature of the works, and the absence of loss/alteration of QI habitats designated for the European sites due to the proposed development, the applicant's environmental consultant considers that the proposed development will not cause any significant negative impacts in relation to habitat loss/alteration at any European site.

The development includes cables being erected within the Glenasmole Valley SAC. The applicant has provided an Appropriate Assessment Screening Report in relation to the application, which considers the impact of development on all European sites within the 'DA015' area and those sites downstream in Dublin Bay. The report concludes that the possibility may be excluded that the proposed project will have a likely significant effect on any of the Natura 2000 sites. The report notes that infrastructure is already in place and that the cables proposed will not cause any additional impact except in the event that they were to fall. The report also notes that cables are being run along verges to the public road, which are not qualifying interests.

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Taking into account:

- the nature, size and location of the proposed works and possible impacts arising from the installation works.
- the qualifying interests and conservation objectives of the Natura sites.
- the potential for in-combination effects arising from other plans and projects.

The possibility may be excluded that the proposed works will 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.

Conclusion

The proposed development is suitable for licencing by the Planning Authority subject to the conditions attached.

Recommendation

I recommend that a decision be made pursuant to the Planning & Development Act 2000, as amended, for the reasons set out in the First Schedule hereto, to Grant a Licence for the said development in accordance with the said plans and particulars, subject to the condition(s) specified in the Second Schedule hereto, the reasons for the imposition of the said condition(s) being as set out in the said Second Schedule.

FIRST SCHEDULE

It is considered that the proposed development accords with the policies and objectives of South Dublin County Council, as set out in the South Dublin County Council Development Plan 2016 - 2022 and subject to the conditions set out hereunder in the Second Schedule is hereby in accordance with the proper planning and sustainable development of the area.

SECOND SCHEDULE

Conditions and Reasons

1. Plans and Particulars.

The cables shall be installed and completed in its entirety fully in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the other conditions attached hereto.

REASON: To ensure that the development shall be in accordance with the permission and that effective control be maintained.

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2. Duration of Licence.

The duration of this licence is for twenty-five years only. The licence shall expire 25 years from the date of the final grant of the licence. Within 3 months of this date the cables shall be removed and reinstated to the satisfaction of the Roads Department of South Dublin County Council and as specified in other conditions.

REASON: To allow the Planning Authority to review the impact of the licenced works the consider the merits or feasibility of any alternative solutions.

3. Withdrawal of Licence.

Notwithstanding any other conditions of this grant, South Dublin County Council reserves the right to withdraw the licence under section 254(4) of the Planning and Development Act, 2000, as amended, where in the opinion of the planning authority by reason of the increase or alteration of traffic on the road or of the widening of the road or of any improvement of or relating to the road, the appliance, apparatus or structure causes an obstruction or becomes dangerous, the authority may by notice in writing withdraw the licence and require the licensee to remove the appliance, apparatus or structure at their own expense.

REASON: To ensure that development is effectively managed.

4. Obsolescence.

In the event of obsolescence, or withdrawal or expiry of the license without renewal, the cables shall shall be removed from the site and the site reinstated at the expense of the applicant or licensee as per the following, unless otherwise agreed with the Planning Authority:

- the verge surface shall be reinstated with selected soil material to a depth of 150mm;
- The verge shall be raked, level and compacted well around any infrastructure, and re-seeded with a grass seed mix predominately containing Dwarf Perennial Ryegrass.

These works are to be undertaken by a competent and experienced Landscape Contractor, to the satisfaction of the Planning Authority.

REASON: To protect the amenities of the area.

5. No Additional Dishes, Antennae or Other Equipment.

No additional cabling or other equipment, other than the cabling for which a licence has been sought, shall be attached to the telecommunications poles without first obtaining the prior written approval of the Planning Authority.

REASON: In the interest of the visual amenity of the area; to ensure that the development shall be in accordance with the permission and that effective control be maintained and in the interest of the proper planning and sustainable development of the area.

6. Change of Ownership.

The applicant shall notify the Planning Authority of any change of ownership, transfer to a new operator or any subsequent agreements to the share the cables.

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REASON: To ensure that the developments shall be in accordance with the Licence granted and that development is effectively managed.

7. Change to Details of Licence Application.

If during the works the Licence Holder becomes aware of information that would materially alter the details previously submitted in advance of the works, it shall immediately notify South Dublin County Council and request approval to proceed.

REASON: To ensure proper application of the licence.

8. Safe Siting.

The applicant shall ensure that the development and associated works will not cause any issue that would endanger public safety by reason of traffic hazard or obstruction to road users.

REASON: To ensure traffic safety.

9. Services.

The licence holder must ensure that works to erect the cables do not impact or damage underground services, existing drainage, public or third party property. In the event of damage to underground or overground property, the licence holder must notify the Area Engineer and detail the site location, pole reference number and completed repair.

REASON: To protect existing infrastructure.

10. Notification to the Roads Authority and National Roads Authority.

(a) The applicant or licensee shall , in advance of the commencement of the works to erect, construct, place or maintain electronic communications infrastructure or any associated physical infrastructure, inform:

(i) South Dublin County Council, and

(ii) where planned work is on a national road, the National Roads Authority.

(b) This licence does not permit the erecting of cables on poles within 10 metres of any special engineering difficulty which includes bridges, retaining walls, quay walls, piers, pylons, cellars, railway crossings or light railways, unstable embankments or cuttings.

REASON: in the interest of proper planning.

11. Maintenance.

Access to the licence area for maintenance purposes by any statutory undertakers shall be available at all times.

REASON: In the interests of the proper planning, maintenance and development of the area.

12. Construction Traffic Management Plan.

The applicant shall submit a construction traffic management plan for the written agreement of the Planning Authority.

(a) The construction traffic management plan shall include details on the maintenance routine during the initial and operational phase of the infrastructure, in essence, the roads department would like to see proposed parking/set down location for maintenance crews.

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(b) No vehicle shall be allowed to park, intrude or obstruct public footpaths/cycle line during the construction and operational stage unless agreed through the construction and traffic management plan.

REASON: To protect the amenities of the area.

13. Safety During Works.

(a) Prior to commencement of works, a temporary traffic management plan shall be agreed with the SDCC Roads Department. The programme of works shall provide detail of the impact on traffic and proposed traffic control at each site which shall conform with the licence holders' statutory obligations. The Roads Authority may issue directions in relation to this submission in accordance with the Road Traffic Act.

(b) The temporary traffic management plan shall be available for inspection on site, and shall comply with the Traffic Signs Manual and health and safety requirements.

(c) Appropriate warning signage including lighting where required shall be erected during the installation period for the benefit of all road users, members of the public and site employees and to highlight the presence of construction related traffic on the public road adjoining the site.

(d) The Licence holder must provide a point of contact (Name / Tel No and Email address) who is directly involved with the management and control of the works. The point of contact shall be contactable, be present on site and shall have control over the work site.

(e) Prior to any works taking place which would affect a public footpath or cyclepath, the applicant shall obtain the written agreement of the SDCC Roads Department for an alternative temporary pedestrian and/or cycle route along the public road and/or public footpath and/or cyclepath, at any location where a public footpath and/or cyclepath is being affected by works. The full cost, including public liability of the provision of the alternative temporary pedestrian and/or cycle route shall be borne by the applicant.

(f) The applicant shall obtain the written agreement of the Roads Department for prior to any interference with the public footpath for the purposes of works.

(g) The Licence Holder shall consult with an Garda Síochána prior to the implementation of any traffic management using temporary traffic signals or Stop & Go boards.

REASON: In the interest of public and traffic safety.

14. Footpath and Cyclists.

The developer shall ensure that the cables do not obstruct pedestrians, cyclists and will not to create a road safety hazard.

REASON: In the interests of public safety and the comfort and safety of vulnerable road users.

15. Costs Incurred.

All costs incurred by South Dublin Council Council including any repairs to the public road and services, arising as a result of the licence, shall be at the expense of the licensee. Work to the public road shall only be carried out by South Dublin County Council.

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REASON: To recover the costs of any necessary works to the public road.

16. Indemnification.

(a) The Licence Holder shall indemnify South Dublin County Council in respect of legal liability, loss, claim or proceedings whatsoever arising out of or in connection with:

(i) death and/or bodily injury to any persons whomsoever; and

(ii) loss or damage to any property whatsoever (arising from the negligent act, omission or breach of duty by the Licence Holder, its employees, servants or agents), which are caused by or arise from the carrying out of associated works or activities under the granted licence (including installation of property) by the Licence Holder, its employees, servants or agents save for where any loss, claim or proceedings arise out of the negligent act, omission, or any breach of duty whatsoever of the relevant road authority or their employees, servants, agents or otherwise.

(b) The Licence Holder shall hold, maintain and submit evidence of the following insurances:

(i) Employers liability insurance with an indemnity limit of not less than €13 million each and every claim; and

(ii) public and products liability insurances with indemnity limits of not less than €6.5million each and every claim respectively

Such insurances shall be extended to include an indemnity to South Dublin County Council where applicable.

REASON: To indemnify the Council for works carried out by the licensee.

17. Construction Noise and Hours.

To control, limit and prevent the generation of unacceptable levels of Environmental Noise Pollution from occurring during construction activity, no Equipment or Machinery (to include pneumatic drills, on-site construction vehicles, generators, etc.) that could give rise to unacceptable levels of noise pollution as set out generally for evening and night-time in S.I. No. 140/2006 - Environmental Noise Regulations 2006 shall be operated on the site before 7.00 hours on weekdays and 9.00 hours on Saturdays nor after 19.00 hours on weekdays and 13.00 hours on Saturdays, nor at any time on Sundays, Bank Holidays or Public Holidays.

Any construction work outside these hours that could give rise to unacceptable levels of noise pollution shall only be permitted following a written request to the Planning Authority and the subsequent receipt of the written consent of the Planning Authority, having regard to the reasonable justification and circumstances and a commitment to minimise as far as practicable any unacceptable noise outside the hours stated above. In this respect, the applicant or developer shall also comply with BS 5228:2009 Noise and Vibration Control on Construction and Open Sites, and have regard to the World Health Organisation (WHO) – Guidelines for Community Noise (1999).

The applicant or developer shall also endeavour to engage in local consultation in respect of any noise sensitive location within 30 metres of the development as approved prior to construction activity commencing on site. Such noise sensitive locations should be

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provided with the following:

- Schedule of works to include approximate timeframes
- Name and contact details of contractor responsible for managing noise complaints
- Hours of operation- including any scheduled times for the use of equipment likely to be the source of significant noise.

REASON: In the interest of public health by the prevention of unacceptable levels of noise pollution which could interfere with normal sleep and rest patterns and/or when people could reasonably expect a level of quietness, the proper planning and sustainable development of the area and to uphold the Council's amenity policies set out in the South Dublin County Council Development Plan.

18. Operational Noise.

(a) Noise due to the normal operation of the proposed development, expressed as LAeq over 15 minutes at the façade of any noise sensitive location, shall not exceed the daytime background level i.e. 0700 – 1900 by more than 10 dB(A) and shall not exceed the background level for evening and night time (currently 19:00 – 07:00) as determined in S.I. No. 140/2006 - Environmental Noise Regulations 2006 .

Clearly audible and impulsive tones at noise sensitive locations during evening and night as determined in S.I. No. 140/2006 - Environmental Noise Regulations 2006 shall be avoided irrespective of the noise level.

(b) Noise levels from the proposed development shall not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any residence, adjoining premises or public place in the vicinity.

(c) All mechanical plant and ventilation inlets and outlets should be sound insulated and/or fitted with sound attenuators as necessary to ensure that the noise level as expressed as LAeq over 15 minutes at 1 meter from the façade of any noise sensitive location does not exceed the background level by more than 10 dB(A) for daytime and shall not exceed the background level for evening and night time (currently 19:00 – 07:00) as determined in S.I. No. 140/2006 - Environmental Noise Regulations 2006.

REASON: In the interest of public health by the prevention of unacceptable levels of noise pollution which could interfere with normal sleep and rest patterns and/or when people could reasonably expect a level of quietness, and to uphold the Council's amenity policies set out in the South Dublin County Council Development Plan.

NOTE: The applicant is advised that under the provisions of Section 254(6) of the Planning and Development Act 2000 (as amended), any person may, in relation to the granting, refusing, withdrawing or continuing of a licence under this section or to the conditions specified by the planning authority for such a licence, appeal to An Bord Pleanála.

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NOTE: The applicant is advised that under the provisions of Section 254(8) of the Planning and Development Act 2000 (as amended), a person shall not be entitled solely by reason of a licence to erect, construct, place or maintain on, under, over or along a public road any appliance, apparatus or structure.

NOTE: A Roads Opening Licence must be obtained from South Dublin County Council prior to the commencement of any works in the public domain in order to comply with the Roads Act 1993, Section 13, paragraph 10. Under this Act, non-compliance constitutes an offence.

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REG: REF: S25421/25


LOCATION: DA015 (2) - Blessington, Co. Dublin



Jim Johnston,
Senior Executive Planner

ORDER: A decision pursuant to Section 254 of the Planning & Development Act 2000, as amended, to Grant a Licence for the reasons set out in the First Schedule above, in accordance with the said plans and particulars, subject to the condition(s) specified in the Second Schedule above, the reasons for the imposition of the said condition(s) being as set out in the said Second Schedule is hereby made.

Date: 25/3/22



Eoin Burke, Senior Planner