

Comhairle Chontae Atha Cliath Theas

PR/1008/22

Record of Executive Business and Chief Executive's Order

Reg. Reference: S25422/04 **Application Date:** 06-Apr-2022
Submission Type: S254 Licence **Registration Date:** 06-Apr-2022
Application

Correspondence Name and Address: Jason Redmond & Associates 5, Lismard Court,
Portlaoise, Co. Laois

Proposed Development: 18m Alpha 3.0 Streetpole Solution with Antennas
and ground equipment cabinet.

Location: Greentrees Road, Walkinstown, Dublin 12

Applicant Name: Signal Infrastructure Ltd.

Application Type: S254 Licence

Site Description:

The application site is located on the north side of the cross-road junction of Limekiln Lane and Greentrees Road/St. Peters Road, at the Circle-K filling station in Walkinstown.

The site currently consists of a widened area of tarmacked public footpath. The surrounding area is predominantly residential in nature.

Licence Application Proposal

18m Alpha 3.0 Streetpole Solution with antennas and ground equipment cabinet.

The applicant has applied for a 5-year licence.

Consultations

EHO	No objection, conditions recommended
Roads	Refusal recommended
Public Realm	No comment or conditions to recommend
Irish Water	No report received
Water Services	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,
- (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).

Guidance on the Potential Location of Overground Telecommunications Infrastructure on Public Roads (2015)

Relevant Policy in South Dublin County Council Development Plan 2022-2028

Chapter 5 Quality Design and Healthy Placemaking

Section 11.4 Information and Communications Technology

- *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.*
- *E5 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.*

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- *IE5 Objective 5:*
To ensure that above ground utility boxes are sensitively located and finished to reduce their visual impact and promote 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

In the consideration of proposals for telecommunications antennae and support structures, applicants will be required to demonstrate:

- *Compliance with the document Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities (1996) and Circular Letter PL 07/12 issued by the Department of the Environment and Local Government (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;***
- ***The 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;***
- *The significance of the proposed development as part of the telecommunications network.*

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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

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with the '*Guidance on the Potential Location of Overground Telecommunications Infrastructure on Public Roads*' (2015).

Assessment

The main issues for consideration are:

- Zoning and council policy
- Roads
- Public realm
- Water Services

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. It is noted that the subject site is not located within an area subject to a Local Area Plan (LAP).

The 2022 – 2028 CDP states that '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).'

Section 8.1 of the Guidance sets out points to be considered when assessing the possibility of placing telecommunications equipment on the roads network. Section 8.1.1 refers to points to consider in the determination of applications on regional and local roads. The Planning Report submitted on behalf of the applicant references the Guidance, in particular in relation to the examples of acceptable roadside structures, stating that standalone poles are the preferred options for such infrastructure in urban settings. The Report also provides a rationale for not providing shared facilities and confirms the structures would '*not detract from the convenience and safety of road uses including pedestrians.*' A Road Safety Audit has not been provided; however, this is not required in all instances. The Planning Authority is therefore satisfied that the proposal has considered the guidance contained within the '*Guidance on the Potential Location of Overground Telecommunications Infrastructure on Public Roads*' (2015).

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With regard to Chapter 5 of the Development Plan, Section 5.2.1 '*The Delivery of Sustainable Neighbourhoods 'The Plan Approach'*', eight key principles against which all new development in the County must be assessed against are set out. It is noted that the eight key principles apply on all zoned development lands. The applicant has not provided a statement detailing 'the plan approach' taken in the design of the development however, an assessment against the eight key principles is provided below:

- *Context* – there are no existing natural, cultural or built heritage features in the vicinity of the subject site. The site is adjacent to an existing petrol filling station and is considered to be an appropriate and complementary land use. It is noted there are existing services boxes located on the lands.
- *Healthy Placemaking* – the telecommunications mast and services box would not impinge significantly on the existing public space, which is currently tarmacked and does not provide any significant placemaking benefit.
- *Connected Neighbourhoods* – the location of the infrastructure would not impact on existing pedestrian and cyclist movements in the area, given the setback distance from the main thoroughfare and existing obstacles to pedestrian and cyclist movement at the site.
- *Thriving Economy* – The development will not impact the ease of access to, or availability of, jobs however, improved service in the area would increase peoples access to online information and services.
- *Inclusive and Accessible* – The telecommunications infrastructure would improve access in the area to ICT services, addressing issues of an existing 'black spot'
- *Public Realm* – The application site is on an existing tarmacked footpath. There is no scope to increase or improve the public realm at this site significantly without impacting on pedestrian and cyclist movements and such works would be beyond the scope of consideration for the current licence application.
- *Built Form and Mix* – Not relevant as the proposed development does not relate to the construction of any buildings.
- *Design and Materials* – The structure has been designed to be slimline, limiting its impact on the skyline. The pole and cabinet would be painted a neutral sky grey colour with a visual impact of slight to moderate. The infrastructure would be viewed as typical street furniture and would therefore not be considered to be incongruous within the streetscape.

In conclusion, it is considered that the proposed development will not adversely impact on the urban quality of the area.

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

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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 location indicated is not within the margins of public roads in the control of the council, thereby not complying with the above definition. The site is located outside the area which has been taken in charge by the Council as public road and is in the ownership of a private freeholder. The development can therefore not be considered under Section 254 and should be **refused**.

The Roads Department has recommended **refusal** for the following reason:

The subject site is registered as a freehold. While the site is maintained by SDCC, it is not in the ownership of SDCC and therefore the applicant should obtain approval from the registered site owner.

The Planning Authority agrees that a licence cannot be issued in this instance as the site is not owned or controlled by SDCC.

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Public Realm

The Public Realm Department has reviewed the licence application and have stated they have no comment or conditions to recommend.

Water Services

The site does not appear to be in the immediate vicinity of any Irish Water infrastructure. The site is currently a tarmac pavement, and it is not considered likely there would be an increase in runoff from the site as a result of the development. Standard **conditions** should be applied in the event of a grant where relevant to ensure compliance with Irish Water Standards codes and details.

Environmental Health Officer (EHO)

The EHO has reviewed the application and has stated no objection to the development. Their report recommends the following **conditions**:

- 1. This permission is for a period of 5 years from the date of this grant of planning permission. The telecommunications structure and related ancillary structures shall then be removed unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period by the Planning Authority or by An Bord Pleanála on appeal.*
- 2. Monitoring to determine the adherence to the guidelines of the International Non-Ionising Radiation Committee of the International Radiological Protection Association, under the auspices of the WHO and the European Pre standard RNV 50166-2 Human Exposure to Magnetic Fields-High Frequency (10KHz to 300GHz) promulgated by CENELEC, the European Committee for Electro technical standardisation shall be made immediately before the site is brought into commission and thereafter at yearly intervals by a competent authority, using up-to-date monitoring equipment. The results of all monitoring shall be available for inspection by the Planning Authority and/or other appropriate body.*

These **conditions** are considered acceptable in the event of a grant to enable the impact of the development to be reassessed with regard to technological advances, and in the interests of public health.

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.

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Screening for Appropriate Assessment

The subject site is not located within nor within close proximity to a European site. The proposed development is located within an established urban area and comprises erection of a 18m Alpha 3.0 Streetpole Solution with antennas and ground equipment cabinet.

Having regard to:

- the small scale and nature of the development,
- the location of the development in a serviced urban area, and
- the consequent absence of a pathway to the European site,

it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

Conclusion

The proposed development is not suitable for licencing by the Planning Authority as the location is not owned or in the control of South Dublin County Council and does not come within the definition of a 'Public Road'.

Recommendation

I recommend that a decision to Refuse Licence be made under Section 254 of the Planning & Development Act, 2000 (as amended) for the reasons set out in the Schedule hereto: -

SCHEDULE

REASON(S)

1. The subject lands are not in the control of South Dublin County Council and are owned by a separate freeholder. As the Council does not own the land, or have a responsibility for the maintenance of the land, the site is not classified as a 'public road' and falls out of the scope of Section 254 of the Planning and Development Act 2000 (as amended) to provide such infrastructure over or along a public road. The Planning Authority cannot grant a licence for the proposed development under these circumstances. Furthermore, it would not be considered acceptable or appropriate in this instance to locate the infrastrucutre on the public road adjacent to the site, as to do so would create a pedestrian obstruction, contrary to the policies and objectives of the South Dublin County Development Plan 2022 - 2028 and the proper planning and sustainable development of the area.

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REG. REF. S25422/04


LOCATION: Greentrees Road, Walkinstown, Dublin 12

jjohnston

Jim Johnston,
Senior Executive Planner

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

Date: 5/8/22



Eoin Burke, Senior Planner