



An
Bord
Pleanála

Board Direction
ABP-306995-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 07/08/2020.

The Board decided, as set out in the following Order, that decided that the provision by SIRO of an overhead, rather than underground, broadband connection to No. 9 Rossbrook constitutes development and development that is not exempted development.

WHEREAS a question has arisen as to whether the provision by SIRO of an overhead, rather than underground, broadband connection to No. 9 Rossbrook would contravene Condition 7 of T.P. 13908/87 and would not be exempted development under Article 9(1)(a)(i) of the Planning Regulations:

AND WHEREAS the said question was referred to An Bord Pleanála by Brian and Clare McCutcheon on the 24th day of March, 2020:

AND WHEREAS An Bord Pleanála, in considering this referral, had particular regard to:

(a) sections 2 and 3 of the Planning and Development Act 2000 (as amended),

(b) articles 5-11 of the Planning and Development Regulations 2001 (as amended), with particular reference to articles 6(1) and 9(1)(a)(i),

(c) Part 1 of Schedule 2 Exempted Development – General of the Regulations, with particular reference to Class 31,

(d) The planning history of the site, with particular reference to Condition 7 of Planning Permission T.P. 13908/87, and

(e) the submissions of the parties to the referral,

AND WHEREAS An Bord Pleanála has concluded that:

(a) the provision of an overhead broadband connection to No. 9 Rossbrook constitutes ‘development’ for the purposes of the Planning and Development Act,

(b) on the basis of the documentation on file in this instance, the service provider comes within the definition of a statutory undertaker authorised to provide a telecommunications service,

(c) the provision of an overhead broadband connection to No. 9 Rossbrook would come within the scope of Class 31 of Part 1 to the Second Schedule of the Planning and Development Regulations 2001, as amended, and

(d) the exemption provided for in Class 31 is, however, restricted, having regard to Condition 7 of Planning Permission T.P. 13908/87, which required all E.S.B. and P&T (telecommunications) services to be laid underground. This condition relates to all services (including future services) and accordingly the provision of the overhead broadband connection would contravene this condition and therefore is not exempted development under Article 9(1)(a)(i).

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that the provision by SIRO of an overhead rather than underground broadband connection to No. 9 Rossbrook constitutes development and development that is not exempted development.

Board Member:

Date: 07/08/2020

Dave Walsh