

An
Bord
Pleanála

Board Direction
ABP-312012-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 09/06/2023.

The Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether the construction of a 12 metre pole with one number antenna attached and two equipment cabinets that form part of Eircom Ltd. Existing telecommunications and broadband network at Ballyclerahan, Clonmel, County Tipperary is or is not development or is or is not exempted development.

AND WHEREAS Eircom Limited care of FocusPlus Limited of N3 Arbourfield House, Dundrum Business Park, Dundrum Road, Dublin requested a declaration on this question from Tipperary County Council and the Council issued a declaration on the 27th day of October, 2021 stating that the matter was development, and was not exempted development:

AND WHEREAS Eircom Limited referred this declaration for review to An Bord Pleanála on the 23rd day of November, 2021:

AND WHEREAS An Bord Pleanála reframed the question to be decided as follows: 'whether the construction of a 12 metre pole with one number antenna attached and

equipment cabinets positioned above the ground level, forming part of a telecommunications system, not exceeding two cubic metres when measured externally, on a portion of lands within the existing Eircom Exchange Compound at Ballyclerahan, County Tipperary is or is not development or is or is not exempted development'

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Article 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 31(b) and 31(f) of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended and
- (d) The documentation and submissions on file and the report of the planning inspector.

AND WHEREAS An Bord Pleanála has concluded that -

- (a) The construction of a 12 metre pole with one number antenna attached and two number equipment cabinets comes within the scope of the definition of 'works' and 'development' contained in Section 2 and 3 of the Planning and Development Act, 2000 (as amended),
- (b) The construction of a 12 metre pole with one number antenna attached would come within the scope of Article 6 (Exempted Development) and related Class 31(b) of Schedule 2 (Part 1: Exempted Development - General) the said Regulations, noting the development as described would be carried out by a statutory undertaker authorised to provide a telecommunications service and that it would meet the conditions and limitations set out for this class of development for it to be exempted development,

- (c) The provision of the ancillary cabinet equipment would come within the scope of Article 6 (Exempted Development) and related Class 31(f) of Schedule 2 (Part 1: Exempted Development - General) the said Regulations, noting the development as described would be carried out by a statutory undertaker authorised to provide a telecommunications service and that it would meet the conditions and limitations set out for this class of development for it to be exempted development,
- (d) On the basis of the description of the development, none of the restrictions on exemption as set out in Article 9 arise,
- (e) The works which are the subject of this referral are not likely to have significant effects on any European sites,
- (f) The works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore, are not subject to Environmental Impact Assessment requirements.

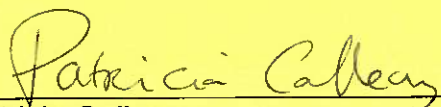
NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the construction of a 12 metre pole with one number antenna attached and equipment cabinets positioned above the ground level, forming part of a telecommunications system, not exceeding two cubic metres when measured externally, on a portion of lands within the existing Eircom Exchange Compound at Ballyclerahan, County Tipperary, is development and is exempted development.

In deciding not to accept the inspector's recommendation that the subject proposals would not constitute exempted development because it would likely involve the formation of a vehicular access on to the R688 fronting the site and endanger public safety by reason of traffic hazard or obstruction to road users and would therefore fall within the restrictions on exemptions that are set out in Article 9(ii) and (iii) of the said Regulations, the evidence on file, including the description of the works presented by the referrer, does not support this finding. It is expressly stated in the information provided by the referrer in its response to the planning authority's

request for further information and in the appeal received by the Board that vehicular access will be in the existing lay-by which is used at the established Eir exchange. A marked aerial photograph of this layby area was presented with the response to the further information and also furnished with the appeal. Having reviewed this information, the Board concluded that the layby is in existence and the Board was otherwise satisfied that the works described would not involve the formation of any new access or material widening to the existing pedestrian access on to the public road.

The Board also concluded that the development could not reasonably be considered to give rise to a traffic hazard noting the modest scale of the works proposed and the infrequent traffic movements that would likely arise, for access and maintenance purposes only, in addition to noting that no new access onto the public road would be created. Accordingly, the Board was satisfied that the provisions of Article 9 (ii) and (iii) of the said Regulations that were relied on by the inspector to conclude that the development would not constitute exempted development, do not arise and therefore the proposals as described constitute development that is exempted development within the meaning of the Planning and Development Act 2000, as amended.

Board Member:



Patricia Calleary

Date: 09/06/2023