



An
Bord
Pleanála

Inspector's Report ABP 309042-20

Question

Whether the erection of a 12m. high wooden pole with one antenna within the existing Eircom Exchange, an equipment container which is less than 2 cubic metres, a gantry pole and RRUs is or is not development or is or is not exempted development.

Location

Broad Street, Adare

Declaration

Planning Authority

Limerick City and County Council

Planning Authority Reg. Ref.

EC63/20

Applicant for Declaration

John Horan

Planning Authority Decision

None

Referral

Referred by

John Horan

Owner/Occupier

Eircom Ltd.

Observer(s)

None

Date of Site Inspection

29/03/21

Inspector

Pauline Fitzpatrick

1.0 Site Location and Description

The site is within the curtilage of the existing Eircom Exchange accessed from Broad Street to the west of Adare village centre. The said exchange building is set back from the roadside boundary with no roadside boundary. A timber pole in the region of 12 metres in height is erected to the front of the said building with a metal equipment container in place.

There is a pedestrian route along the northern boundary providing access from the lane via a mature residential scheme to the N21. The site is bounded by dwellings of varying designs to the north, south and east.

2.0 The Question

As per the documentation that accompanies the referral a question is not specifically posed. As can be extrapolated from the details on file Mr. Horan is contesting the planning authority's decision on an earlier section 5 declaration under ref. EC50/20. In that instance the referrer was Eircom Ltd.

On the basis of the information on file I consider that the question arising can be worded as following:

Whether the construction of a 12 metre wooden pole with 1 no. antennae attached, equipment cabinet (2.0 x 0.815 x 0.815), gantry pole and RRUs which will form part of Eircom Ltd. existing telecommunications and broadband network at Adare Eircom Exchange, Broad Street, Adare. Co. Limerick is or is not development or is or is not Exempted Development.

3.0 Planning Authority Declaration

3.1. Declaration

The development as proposed comes within the scope of exempted development as defined by Class 31(b) and 31(f) of the Planning and Development Regulations, 2001, as amended.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report from the Development Inspector notes that a section 5 declaration under ref. EC50/20 was issued to Eircom Ltd. for the described development on 22/10/20. The development comes with the scope of class 31(b) and 31(f) of the Planning and Development Regulations 2001 as amended.

3.2.2. Other Technical Reports

None

4.0 Planning History

EC50/20 –the planning authority issued a declaration on 22/10/20 that the development as described comes within the scope of exempted development as defined by Class 31(b) and 31(f) of the Planning and Development Regulations, 2001, as amended and decided that it is development and is exempt development.

20/699 - permission was refused on 10/09/20 for a 15 metre high communications structure (total height with antennas 15.1 metres) with associated antennae, communication dishes, ground equipment and associated site development works on grounds that the prominent location within an ACA in Adare town centre, which is a historical location, would be visually obtrusive and would seriously injure and depreciate the value of properties in the vicinity. Regard is had to the telecommunications guidelines which state that only as a last resort should free standing masts be located within or in the immediate surrounds of smaller towns or villages.

5.0 Policy Context

5.1. Development Plan

Adare Local Area Plan 2015

The site is within an area zoned Existing Residential. The matrix is silent as to the acceptability or otherwise of telecommunications structures/utilities in such a zone.

The site is not within the Architectural Conservation Area as delineated on Map 4.

Access to Broadband and Telecommunications:

The village of Adare benefits from access to Broadband. It is important that adequate broadband service infrastructure is installed at the appropriate time into new development schemes.

The Planning Authority's goal is to achieve a balance between facilitating the provision of mobile telecommunications services in the interests of social and economic progress and sustaining residential amenities, environmental quality and public health. When considering proposals for telecommunication masts, antennae and ancillary equipment, the Council will have regard to the DEHLG document 'Telecommunications Antennae and Support Structures' (DEHLG 1998) and any subsequent advisory document issued by the DECLG.

Objective IN 8: Broadband - to ensure that all new development proposals where relevant, incorporate broadband service infrastructure on an open access basis.

5.2. Natural Heritage Designations

Having regard to the nature and extent of the development within the village of Adare within an existing Eircom Exchange compound, and the distance of the site to the nearest European site, it is concluded that no appropriate assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

6.0 The Referral

6.1. Referrer's Case

The submission by Mr. Horan (accompanied by supporting documentation) in contesting the planning authority's decision can be summarised as follows:

- Adare village is a historical location and an Architectural Conservation Area.
- The proposal is visually obtrusive and will seriously injure and depreciate the value of properties in the vicinity.

- 3 applications for a telecommunications mast were refused in 2017, 2019 and 2020. The 1st two were refused on the basis of the ACA and the 3rd on the basis of the ACA, visual obtrusiveness and injury/depreciation of value of property in the vicinity.
- No notification of the section 5 declaration was given to residents or local councillors who made observations on the planning applications.
- The Council's Heritage Officer was not made aware of the declaration.

6.2. Planning Authority Response

None

6.3. Owner's Response

A response by Focus Plus Ltd. on behalf of Eircom Ltd. can be summarised as follows:

Visual Impact

- As per Class 31(b) a 12 metre wooden pole was selected for the site in order to reduce visual impact.
- The structure is of a design and scale that would not be out of character or be visually obtrusive or an incongruous element in the village. It is nondescript in character and design and is not dissimilar in design to a lamp standard or traffic light pole which are common place.
- The village contains a number of relatively high slim-line structures. There are 48 wooden poles and 24 light poles varying in height from 6 to 10 metres within 400 metres of the site. The visual impact would be mitigated by the presence of these structures and would not have a adverse impact on the environment and would be in keeping with the village.
- While visible from certain views, these views are intermittent and would not be detrimental to the overall amenity of the area. It is consistent with the telecommunications structures' guidelines.

Architectural Conservation Area

- The site is located within an existing Eircom Exchange compound within the village and has been an established communications installation for over 30 years.
- The site is not within an ACA. It had been wrongly identified as being within an ACA by Limerick City and County Council during the assessment of the application under ref. 20/699.

Devaluation of Property

- There is no evidence to substantiate the contention that the proposal would devalue property.
- It has been noted through previous Board reports that the sighting of telecommunications is now normal in Ireland and their impact has become reduced in recent times through the population's general acceptance of such installations and realisation of their importance.
- The structure will allow for much needed enhanced communications services to the village and surrounding area.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

Section 2(1)

“works” are defined as any act or operation of construction, excavation, demolition, extension, alterations, repair or renewal...

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—

(a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,

(b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or

(c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

Section 3 (1) Development means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structure or other land.

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act. Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

7.2. Planning and Development Regulations, 2001, as amended

Article 5 – definitions:

“mobile telephony” means public mobile telephony;

“telecommunications network” means the whole of the telecommunications infrastructure and any associated physical infrastructure of any network operator;

“telecommunications service” means services which consist wholly or partly in the transmission or routing of signals on a telecommunications network or both transmission and routing;

Exempted Development:

Article 6. (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1) of the regulations sets out various restrictions on works that would otherwise be exempted development under Article 6.

Subsection (xii) states the following restriction: “further to the provisions of section 82 of the Act, consists of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or

the draft development plan and the development would materially affect the character of the area.”

SCHEDULE 2, Part 1 - Exempted Development

Class of Development	Conditions and Limitations
<p>CLASS 31 The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of—</p>	
<p>(b) overhead telecommunications including the erection of poles or other support structures or the use of existing poles or other support structures,</p>	<ol style="list-style-type: none"> 1. Poles or other support structures carrying overhead lines shall not exceed 12 metres in height. 2. Poles or other support structures carrying other equipment shall not exceed 12 metres in height and 0.6 metres in diameter measured at the widest point, where “other equipment” means 2 transmitting or receiving dishes (the diameter of which shall not exceed 0.6 metres), or 1 panel antenna (the dimensions of which shall not exceed 0.85 metres in length x 0.65 metres in width x 0.2 metres in depth) used for the provision of a specific telecommunications service and the provision of which would otherwise require an additional pole route carrying overhead wires. 3. Where a pole or poles or other support structures carry radio

	transmitting or receiving apparatus, the field strength of the non-ionising radiation emissions from that installation shall not exceed the limits specified by the Commission for Communications Regulation.
(f) cabinets forming part of a telecommunications system,	The volume above the ground-level of any such cabinet shall not exceed 2 cubic metres measured externally.

8.0 Assessment

8.1. Legal Precedent

8.1.1. At the outset I would bring to the Board's attention the legal judgement on Narconon Trust and An Bord Pleanala, Meath County Council, Ballivor Community Group and Trim Municipal Council issued in January 2020 (ref. 2019/16 J.R). In same it was determined that a valid section 5 determination issued by Meath County Council which was not referred to the Board for review or challenged by way of judicial review is valid and conclusive and that subsequent declarations sought by 3rd parties and its determination by the Board was a collateral attack on the Council's declaration.

8.1.2. In terms of the case before the Board I note that an earlier section 5 application was made by Eircom Ltd. on 29/09/20 to Limerick City and County Council (file reference EC50/20) The question posed was as follows:

Whether the construction of a 12 metre wooden pole with 1 no. antennae attached, equipment cabinet (2.0 x 0.815 x 0.815), gantry pole and RRUs which will form part of Eircom Ltd. existing telecommunications and broadband network at Adare Eircom Exchange, Broad Street, Adare. Co. Limerick is or is not development or is or is not Exempted Development.

8.1.3. The planning authority issued a declaration dated 20/10/20 that the above as described was development and was exempt development. The said declaration

was not referred to the Board for review nor challenged by way of judicial review under section 50 of the Planning and Development Act, 2000, as amended.

- 8.1.4. The referrer lodged a section 5 application to the planning authority on the 05/12/20. The development is described on the application form as follows:

Eir Mobile Exchange

12 metre high mast - timber pole with 14 port Huawei (sic) Antennas

- 8.1.5. The planning authority in issuing its decision framed the development exactly as per the question posed and adjudicated upon in the previous section 5 application.

- 8.1.6. In referring the decision to the Board for review the referrer states that he is appealing the decision on the grounds of the location of the mast within Adare and an ACA, its visual obtrusiveness and impact on amenities of properties in the area. The referrer did not contest the description of the development as given by the planning authority in its declaration.

- 8.1.7. I submit, on the basis of the information on file, that the question now before the Board is the same, in substance, as the question put to the Council and previously answered by way of the Council's declaration under ref. EC50/20. Save for the erection of the 12 metre timber pole and the equipment container put in place following the said declaration, I submit that there is no change in factual or planning circumstances since the Council's declaration with no new information to hand. The section 5 application and this subsequent review could be seen as a means by the referrer to question the validity of the prior decision other than in accordance with the provisions of section 50(2) of the Planning and Development Act, 2000, as amended.

- 8.1.8. On this basis and in the context of the above referenced legal judgement I recommend that the Board dismiss the referral under the powers afforded to it under section 138 of the Planning and Development Act, 2000, as amended.

- 8.1.9. Should the Board not concur the following is my assessment of the referral.

8.2. Preliminary Matters

- 8.2.1. It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the proposed telecommunications infrastructure but

rather whether or not the matter in question constitutes development, and if so whether it falls within the scope of exempted development.

- 8.2.2. The plans and details that accompany the section 5 declaration request to the planning authority and which were forwarded to the Board are, in my opinion, insufficient to allow for a proper assessment of the case. The plans and details which accompanied the section 5 declaration request by Eircom Ltd. under ref. EC50/20 to which the referrer in this instant case refers, were sought and due regard is had to same.
- 8.2.3. Reference is made by the referrer to a refusal of permission for a 15 metre high mast on the site with associated antennae, communication dishes, ground equipment and associated site works under file ref. 20/699. The development refused permission is not the same and differs from that subject of this referral both in terms of the height of the structure and the equipment to be attached thereon.

8.3. Is or is not development

Having regard to the definitions of 'development' and 'works', as set out under Sections 3(1) and 2(1) respectively of the Planning and Development Act 2000, as amended, I consider that the works, entailing the erection of a wooden pole to which an antennae is to be attached and equipment cabinet, gantry pole and RRUs constitute development within the meaning of the Act. Therefore, it is my opinion that the remaining question in this case is whether or not the proposed works are exempted development.

8.4. Is or is not exempted development

- 8.4.1. In considering Class 31 of Part 1 of Schedule 2, one must first consider whether the developer is a statutory undertaker for the purposes of the regulations. I note that Eircom Ltd. is authorised by ComReg to provide electronic communications networks and services in Ireland. I am satisfied that the developer is a statutory undertaker within the definition assigned in the Act.

8.4.2. In terms of Class 31 (b) pertaining to overhead telecommunications including the erection of poles or other support structures or the use of existing poles or other support structures I note the following:

- The proposal entails the erection of a 12 metre high wooden pole with a diameter of 0.4 metres at its widest point at the base. These dimensions comply with condition 2 attached to the exemption, namely that poles or other support structures carrying equipment shall not exceed 12 metres in height and 0.6 metres in diameter measured at the widest point.
- 1 no. port framed antennae 0.849 in height, 0.399 in width and 0.196 metres in depth is proposed to be erected on the pole and complies with the condition in terms of 'other equipment' meaning 1 panel antenna (the dimensions of which shall not exceed 0.85 metres in length x 0.65 metres in width x 0.2 metres in depth) used for the provision of a specific telecommunications service and the provision of which would otherwise require an additional pole route carrying overhead wires.
- In addition, 2 no. RRUs (remote radio units) are proposed to be installed on a 3 metre high gantry pole. It is my understanding that RRUs act as transceivers, namely to transmit and receive the user signals to the base station and vice-versa. They are generally installed on towers and are controlled by a controller placed inside a closed shelter on the ground nearby the tower. The RRU and the controller form the Base Transceiver Station.
- A gantry pole as defined in the Collins English Dictionary is a high metal structure that supports a set of road signs, railway signals, or other equipment. In terms of the development as proposed I submit that it constitutes a support structure with the RRUs constituting 'other equipment'.
- On this basis the development effectively entails 2 no. 'support structures' and 3 no. 'other equipment'.

8.4.3. I submit that any reasonable reading of the exempted development provisions would come to the conclusion that the provision allows for 1 no. pole/support structure on a site with the respective conditions in terms of the number of dishes and antennae applicable to that 1 no. mast. Were this not to be the case then there would, in

effect, be no limitations in the numbers of masts that could be erected on a site. This cannot be considered to be within the spirit of what is intended.

- 8.4.4. Notwithstanding, should the Board consider the 3 metre gantry pole as forming an integral part of the main mast to be considered as one, I submit that the conditions allow for either 2 no. transmitting or receiving dishes or 1 panel antenna. As the RRUs could be considered to be comparable to transmitting or receiving dishes the number of installations (1 no. antenna and 2 no. RRUs) would exceed the relevant provisions and would, therefore, not be exempted development.

8.5. Restrictions on exempted development

- 8.5.1. As per Article 9(1)(xii) of the regulations the above exempted development provisions would not apply should the development consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

As per the current Adare Local Area Plan the site is not within the ACA delineated for the village. Whilst the mast may be visible from the ACA the restrictions are clear in terms of location within an ACA. I therefore submit that the restrictions are not applicable in this case.

9.0 Recommendation

Having regard to the foregoing I recommend the Board dismiss the referral under section 138 of the Planning and Development Act, 2000, as amended, for the following reasons and considerations:

Having regard to:

- The section 5 declaration issued by Limerick City and Council on the 20th day of October, 2020 under file reference number EC50/20 that the construction of a 12 metre wooden pole with 1 no. antennae attached, equipment cabinet (2.0

x 0.815 x 0.815), gantry pole and RRUs which will form part of Eircom Ltd. existing telecommunications and broadband network at Adare Eircom Exchange, Broad Street, Adare. Co. Limerick is development and is exempt development.

- The said section 5 declaration was not referred to the Board for review or challenged by way of judicial review under section 50 of the Planning and Development Act, 2000, as amended.
- The question posed in the current section 5 application and in the declaration issued by Limerick City and County Council on the 11th day of December 2020 and referred to the Board for consideration, is the same as that subject of the extant declaration under file reference number EC50/20.
- No change in factual or planning circumstances since the said declaration with no new information to hand.

The Board is satisfied that, in the particular circumstances, the referral should not be further considered.

Pauline Fitzpatrick
Senior Planning Inspector

May, 2021