



An  
Bord  
Pleanála

## Inspector's Report RL 15.RL3575

### Question

Whether the placing of information signage (stickers/vinyls) relating to Eircom Ltd., trading as *eir*, on an existing Eircom telecommunications cabinet at Dunleer, Co. Louth is or is not development and is, or is not, exempted development.

### Location

Off the R132, Mullary Manor, Dunleer, Co. Louth

### Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S5 2017/6

Applicant for Declaration

Eircom Ltd.

Planning Authority Decision

The placing of information signage (stickers/vinyls) relating to Eircom Ltd trading as *eir*, on an existing telecommunications cabinet is development and is exempted development.

### Referral

Referred by

Eircom Limited

Owner/ Occupier

Eircom Limited

**Observer(s)**

No observers

**Date of Site Inspection**

15<sup>th</sup> June 2018

**Inspector**

Erika Casey

## 1.0 Site Location and Description

- 1.1. The subject site is located approximately 3.5 km south of Dunleer Town Centre. It is located c. 50 metres north west of the Valley Inn public house on the eastern side of the R132. There is an existing dwelling located to the east of the site and the cabinet is located in front of the boundary fence of this property.
- 1.2. The development comprises an existing telecommunications cabinet. The cabinet is of standard design with the following dimensions – 70 cm length x 45 cm wide x 124 cm high. The information stickers/vinyls subject of this referral are located on the front and side of the cabinet. The stickers are green in colour with white font and state that broadband telecommunications infrastructure is now available in the locality and includes details of a website address as well as the *eir* corporate logo. It is stated in the referral documentation that the objective of the information stickers/vinyls is to create awareness locally that high speed infrastructure is now available in the community. The dimensions of the stickers/vinyls are:
  - Side vinyls: 355 mm wide x 1000 mm high
  - Front vinyl: 523 mm wide x 520 mm high

## 2.0 The Question

- 2.1. The question that has arisen is *“whether the placing of information signage (stickers/vinyls) relating to Eircom Ltd., trading as eir, on an existing Eircom telecommunications cabinet at Dunleer, Co. Louth is or is not development and is, or is not, exempted development.”*
- 2.2 It should be noted that the wording of the question has been amended for clarity from that submitted by the referrer to include the wording “is or is not development”.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

- 3.1.1 The placing of information signage (stickers/vinyls) relating to Eircom Ltd. trading as *eir*, on an existing telecommunications cabinet approximately 50m NW of the Valley

Inn (off R132), Mullary Manor, Dunleer, Co., Louth is development and is exempted development.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report (06.04.2017)**

- The placing of information signage (stickers/vinyls) comprises a material change of use and is development under Section 3 (2) (a) of the Planning and Development Act 2000.
- The placing of information signage is exempted development under the provisions of Class 12, Part 2 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).<sup>1</sup>

#### **3.2.2. Other Technical Reports**

- No other reports received.

### **4.0 Planning History**

4.1 No relevant planning history.

### **5.0 Policy Context**

#### **5.1. Development Plan**

5.1.1 The operative Development Plan is the Louth County Development Plan 2015-2020. Section 6.8 of the plan addresses signage. Section 9.11.7 provides guidance on telecommunications structures.

#### **5.2. Natural Heritage Designations**

5.2.1 The nearest Natura 2000 sites are the Clogher Head SAC located c. 10.6 km to the east of the site and the Boyne Coast and Estuary SAC located c. 10.6 km to the south east.

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<sup>1</sup> Note: wording of Planner's Report corrected - see correspondence on file Louth Co. Co. 16<sup>th</sup> May 2017.

## 6.0 The Referral

### 6.1. Referrer's Case

- The definition of development under Section 3 of the Planning and Development Act indicates that where a structure becomes used for the exhibition of advertisements, that constitutes a material change of use.
- Article 9 of the Regulations sets out 21 criteria under which the exemption provided for under Article 6 cannot be availed of. The Planning Authority determined that none of the criteria described in Article 9 of the Regulations applied to the information stickers/vinyls.
- It is considered that the information signage constitutes exempted development under Class 12 of Part 2, Schedule 2 of the Regulations. These exemptions are applicable to advertisement works undertaken by a statutory undertaker.
- Eircom Ltd. is a provider of telecommunications infrastructure and services and is a statutory undertaker for the purposes of the Act. As such, the information stickers/vinyls qualify for consideration under Class 12, Part 2, Schedule 2 of the Regulations, which state that the following works constitute exempted development: *“Advertisements for the purposes of announcement or direction or warning exhibited by a statutory undertaker in relation to the operation of the statutory undertaking.”*

### 6.2. Planning Authority Response (16.05.2017)

- Notes typographical error in paragraph 6.2 (a) of the Planner's Report dated the 23<sup>rd</sup> of March 2017.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

**Section 3(1)** of the Act states the following in respect of ‘development’:

*“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.”*

**Section 3(2)** of the Act states:

*“For the purposes of subsection (1) and without prejudice to the generality of that subsection—*

*(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements,*

*the use of the land shall be taken as having materially changed.”*

**Section 2 (1)** of the Act states that *“advertisement” means any word, letter, model, balloon, inflatable structure, kite, poster, notice, device or representation employed for the purpose of advertisement, announcement or direction”.*

**Section 2 (1)** of the Act defines a statutory undertaker as:

*“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 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

**Article 6(2)** of the PDR sets out the exemptions provided for advertisements and states:

*“(a) Subject to article 9, development consisting of the use of a structure or other land for the exhibition of advertisements of a class specified in column 1 of Part 2 of Schedule 2 shall be exempted development for the purposes of the Act, provided that -*

*(i) such development complies with the conditions and limitations specified in column 2 of the said Part 2 opposite the mention of that class in the said column 1, and*

*(ii) the structure or other land shall not be used for the exhibition of any advertisement other than an advertisement of a class which is specified in column 1 of the said Part 2 and which complies with the conditions and limitations specified in column 2 of the said Part 2 opposite the mention of that class in the said column 1.*

*(b) Subject to article 9, development consisting of the erection of any advertisement structure for the exhibition of an advertisement of any one of the classes specified in column 1 of Part 2 of Schedule 2 shall be exempted development for the purposes of the Act, provided that:*

*(i) the area of such advertisement structure which is used for the exhibition of an advertisement does not exceed the area, if any, specified in column 2 of the said Part 2 opposite the mention of that class in the said column 1*

*(ii) the advertisement structure is not used for the exhibition of advertisements other than advertisements of the class to which the exemption relates*

*(iii) further to section 57 of the Act, the advertisement structure is not erected on a protected structure or a proposed protected structure save an advertisement structure referred to in Classes 5, 9 or 15 of column 1 of Part 2 of Schedule 2*

*(iv) further to section 82 of the Act, the advertisement structure is not located on 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 development plan, so as*

*to materially affect the character of the area, save an advertisement structure referred to in Classes 5, 9 or 15 of column 1 of Part 2 of Schedule 2, and*

*(v) where the advertisement structure is within a Gaeltacht area, any advertisement exhibited is*

*(I) in Irish, or*

*(II) in Irish and other languages, with prominence given to the Irish text, and identical content in all versions of the text.”*

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

**Schedule 2, Part 2** of the PDR relates to exempted development in respect of advertisements.

**Class 12** states:

*“Advertisements for the purposes of announcement or direction or warning exhibited by a statutory undertaker in relation to the operation of the statutory undertaking.”*

There are no conditions or limitation specified in Column 2 with respect to this class of advertisement.

## 8.0 **Assessment**

### 8.1 **Preliminary Matters**

8.1.1 It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the information signage (stickers/vinyls), but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

### 8.2 **Is or is not development**

8.2.1 The development comprises the erection of information signage (stickers/vinyls) on an existing telecommunications cabinet. I am satisfied that due to the nature of the development that they would constitute ‘development’ for the purposes of Section 3 (1) of the Planning and Development Act. The definition of development refers to the making of any material change in the use of any structure or land. Section 3 (2) (a) of



the Act specifies that where any structure becomes used for the exhibition of advertisements, the use of land shall be taken as having materially changed.

8.2.2 In this context, the erection of the information signage (stickers/vinyls) would comprise a material change of use of the telecommunications cabinet and would, therefore, constitute development under Section 3 (2) (a) of the Act.

### 8.3 Is or is not exempted development

8.3.1 Section 4(1) of the Act sets out provisions in relation to exempted development. It is not considered that the information signage (stickers/vinyls) complies with any of these provisions.

8.3.2 Section 4(2) of the Act provides that the Regulations can make provision in respect of exempted development. Article 6(2) of the Planning and Development Regulations 2001, as amended makes provision for exemptions relating to advertisements subject to any provisions of Article 9. I am satisfied that the development complies with the conditions and limitations stipulated under Article 6(2). It is noted that the advertisement structure is not located within an Architectural Conservation Area, is not within a Gaeltacht Area and is not erected on a protected structure.

8.3.4 Class 12 of Schedule 2, Part 2 states:

*“Advertisements for the purposes of announcement or direction or warning exhibited by a statutory undertaker in relation to the operation of the statutory undertaking.”*

Having reviewed the information submitted by the referrer, I am satisfied that Eircom would constitute a “statutory undertaker” as defined under Section 2 (1) of the Act as they are a telecommunications service provider. The information signage (stickers/vinyls) would come within the scope of Class 12 being an advertisement for the purpose of announcement by a statutory undertaker in relation to the operation of the statutory undertaking. The signage relates to the operations of *eir* and communicates information regarding high speed network availability in the area.

8.3.5 I conclude, therefore, that the subject information signage (stickers/vinyls) as erected on an existing telecommunication cabinet as described in the referral documentation

comes within the exempted development provisions of Class 12, Schedule 2, Part 2 of the Regulations.

#### 8.4 **Restrictions on exempted development**

- 8.4.1 Article 9 (1) of the Regulations sets out a number of restrictions on exempted development. I am satisfied that the development does not contravene any of these stated restrictions.

##### **Appropriate Assessment**

- 8.4.2 Having regard to the nature and extent of the development within an established urban area, and that the distance of the site to nearest European site, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### 9.0 **Recommendation**

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to *whether the placing of information signage (stickers/vinyls) relating to Eircom Ltd., trading as eir, on an existing Eircom telecommunications cabinet at Dunleer, Co. Louth is exempted development:*

**AND WHEREAS** Eircom requested a declaration on this question from Louth County and the Council issued a declaration on the 6th day of April, 2017 stating that the matter was development and was exempted development:

**AND WHEREAS** Eircom referred this declaration for review to An Bord Pleanála on the 24th day of April, 2017.

**AND WHEREAS** An Bord Pleanála reconfigured the question as follows:

Whether the placing of information signage (stickers/vinyls) relating to Eircom Ltd., trading as *eir*, on an existing Eircom telecommunications cabinet at Dunleer, Co. Louth is or is not development and 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) The definitions of “advertisement” and “statutory undertaker” as set out in Section 2(1) of the Planning and Development Act, 2000, as amended,
- (c) Article 6(2) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Class 12 of Part 2, Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) The reports of the Planning Authority and the Inspector.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The placing of the information signage (stickers/vinyls) on an existing Eircom telecommunications cabinet constitutes an advertisement within the meaning of Section 2 (1) of the Planning and Development Act, which would result in the structure becoming used for the exhibition of an advertisement, and the use of the land would, therefore, materially change, and constitute development, in accordance with section 3 (2) (a) of the Planning and Development Act 2000 (as amended).
- (b) The placing of information signage (stickers/vinyls) on an existing Eircom telecommunications cabinet comes within the exempted

development provisions of Class 12, Schedule 2, Part 2 of the Planning and Development Regulations 2001.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the information signage (stickers/vinyls) is development and is exempted development.

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**Erika Casey**  
**Senior Planning Inspector**

**18th June 2018**