

**An  
Bord  
Pleanála**

**Board Order  
ABP-306995-20**

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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Cork City Council**

**Planning Register Reference Number: R559/19**

**WHEREAS** a question has arisen as to whether the provision by SIRO of an overhead, rather than underground, broadband connection to number 9 Rossbrook, Model Farm Road, Cork would contravene condition number 7 of planning register reference number T.P. 13908/87, and would not be exempted development under article 9(1)(a)(i) of the Planning and Development Regulations, 2001, as amended:

**AND WHEREAS** Brian and Clare McCutcheon care of McCutcheon Halley of 6 Joyce House, Barrack Square, Ballincollig, County Cork requested a declaration on the question from Cork City Council and the Council issued a declaration on the 11<sup>th</sup> day of March, 2020 stating that the matter is development and is exempted development:

**AND WHEREAS** Brian and Clare McCutcheon referred the declaration for review to An Bord Pleanála on the 24<sup>th</sup> day of March, 2020:

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

- (a) sections 2 and 3 of the Planning and Development Act 2000, as amended,
- (b) articles 5 to 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 those Regulations, with particular reference to class 31,
- (d) the planning history of the site, with particular reference to condition number 7 of planning register reference number T.P. 13908/87, and
- (e) the submissions of the parties to the referral:

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

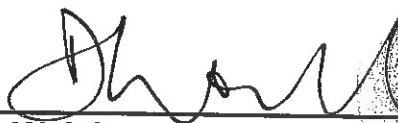
- (a) the provision of an overhead broadband connection to number 9 Rossbrook constitutes 'development' for the purposes of the Planning and Development Act, 2000, as amended,
- (b) on the basis of the documentation on file in this instance, the service provider comes within the definition of a statutory undertaker authorised to provide a telecommunications service,
- (c) the provision of an overhead broadband connection to number 9 Rossbrook would come within the scope of class 31 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as amended, and

- (d) the exemption provided for in class 31 of those Regulations is, however, restricted, having regard to condition number 7 of planning register reference number 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) of those Regulations:

**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 provision by SIRO of an overhead rather than underground broadband connection to number 9 Rossbrook, Model Farm Road, Cork constitutes development and development that is not exempted development.

### **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



**Dave Walsh**

**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

Dated this 14<sup>th</sup> day of August 2020.

