

The Secretary,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1

18th January 2022

**Re: Referral of a non-determined application for a Declaration under Section 5 of the Planning and Development Act 2000 – 2021 made to Kilkenny County Council on 17 November 2021.**

**Eircom Exchange, Haggard Road, Kells, County Kilkenny**

Dear Sir/ Madam,

We, Doreen and Peter Thomson, 4 Priory Grove, Kells, County Kilkenny wish to Refer the non-determination of an application for a Declaration under Section 5 of the Planning and Development Act 2000 – 2021 made to Kilkenny County Council on 17 November 2021 in respect of works carried out by or on behalf of Eircom Limited at the Eircom Exchange, Haggard Road, Kells, County Kilkenny in November 2021.

The question we sought a Declaration for was in respect of the following:

1(a) Were the works involved in developing a telecommunication structure foundation/ base in its current location at Kells Eircom Exchange, Haggard Road, County Kilkenny "development" within the meaning in the Planning and Development Act 2000 - 2021 and, if so, were the works involved "exempted development" under the Planning and Development Act 2000 - 2021 or the Planning and Development Regulations 2001 - 2021; and

1(b) If the works referred to in 1(a) were "development" within the meaning in the Planning and Development Act 2000 - 2021 and deemed to be the works which were not "exempted development" under the Planning and Development Act 2000 - 2021 (including fibre optic cables), wire, tube, pipe, duct or similar thing of any device containing any such cable, wire, tube, pipe, duct or similar thing, from the road and/ or Eircom Exchange building to the telecommunication structure foundation/ base, "exempted development" under the Planning and Development Act 2000 - 2021 or the Planning and Development Regulations 2001 - 2021?

A copy of the complete application and the receipt letter from the Council dated 24 November 2021 are attached.



We also wrote to Eircom Limited and its agents advising the application had been made and enclose a copy of this correspondence. This correspondence was not acknowledged to us.

The Council did not refer the Section 5 application to Eircom Limited or any other Section of the Council or outside body/ agency and Eircom Limited did not write to the Council in respect of the file.

Prior to making the application for a declaration, we wrote to the Council bringing the works to its attention and seeking enforcement action. We enclose a copy of that correspondence which gives more context to the Section 5 application.

We also copied the request for enforcement to Eircom Limited and its agents. This correspondence was not acknowledged to us.

On 1<sup>st</sup> December 2021 Kilkenny County Council issued a Warning Letter to Eircom Limited in respect of non-compliance with planning permission Ref: 20/394 (ABP ref: PL10.308931).

It is understood Eircom Limited or its agents have responded to the Warning Letter indicating its intention to revert to the permission granted by An Bord Pleanála, although we have not seen the correspondence. The planning permission granted by An Bord Pleanála was dependent on laying cables (including fibre optic cables) and other underground infrastructure from the public road and/ or Eircom Exchange building to the permitted telecommunication structure foundation/ base. However, these cables and other underground infrastructure were laid to serve the telecommunication structure foundation/ base which we contend is unauthorised and, therefore, we further contend Eircom Limited cannot now proceed to implement its planning permission until the issue of the unauthorised connections, which are the subject of item 1(b) of this referral, are fully resolved.

We have written to the Planning Authority outlining our concerns to Eircom Limited's latest proposals (Copy also attached).

We look forward to the Board's determination and enclose the required fee of €220.

Yours faithfully,



Doreen Thomson and Peter Thomson,

4 Priory Grove,

Kells,

County Kilkenny

R95 VY05



Enforcement Section,  
Planning Department,  
Kilkenny County Council,  
County Hall,  
John Street,  
Kilkenny

By email and post

18 January 2022

Dear Sir/ Madam,

**Unauthorised Development at Haggard Road, Kells, County Kilkenny**

We understand Eircom Limited has responded to the Warning Letter dated 1<sup>st</sup> December 2021 indicating its intention to revert to implementing planning permission Ref: 20/394 (ABP ref: PL10.308931).

It is our contention it cannot do this without first addressing the issue of the unauthorised development it has carried out on the site and clarified a number of other matters as follows:

1. For Eircom Limited to provide a foundation/ base in the permitted location and then erect the permitted telecommunication structure, it will first have to remove the existing 10m high wooden pole and the apparatus attached to it. We would request that the Planning Authority ascertain from Eircom Limited how it intends to maintain services to the existing customer base in and around the village when the existing wooden pole and apparatus is removed or to confirm there will be no service for a period of time.

2. Question 1(b) of the Referral now before An Bord Pleanála seeks to establish whether the cables and other underground infrastructure which were laid to serve the telecommunication structure foundation/ base, which we contend are unauthorised, are or are not exempted development. We believe they are not exempted as they were laid to serve an unauthorised development. Therefore, Eircom Limited cannot avail of these unauthorised works to facilitate the proposed telecommunication structure. The Planning Authority did not determine otherwise when it did not issue a Section 5 Declaration as requested by us, and Eircom Limited did not submit anything to the Planning Authority to make the case the works were exempt. It is respectfully submitted the Planning Authority cannot sanction the use of these works to facilitate the proposed telecommunication structure as to do so would undermine the role of An Bord Pleanála in determining the question as part of its consideration of the current Referral.

3. We wish to know what the intention of Eircom Limited is for the existing unauthorised telecommunication structure base and request the Planning Authority establish this. If it wishes to retain it, we consider a retention application should be made and determined before any further works are carried out, including erecting the proposed telecommunication structure. Consideration will need to be given to the expanse of hard surface which will exist if the unauthorised structure is allowed to be retained and how surface water will be drained to ground to avoid flooding neighbouring land during



periods of heavy rain. There will be very little ground left for drainage once a second hard standing is laid.

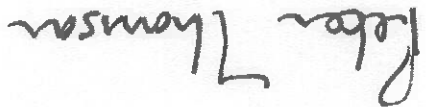

If Eircam Limited intends to remove the unauthorised base in part, this will also require retention permission. If it intends to remove it in full, a method statement will be required. It would be unacceptable for us and other neighbours who are required to work from home within a matter of meters from the site, to endure with the constant noise of jack hammers etc while 30 cubic meters of concrete is excavated and removed.

It is regrettable that Eircam Limited has not responded to any of the correspondence that we have sent to it or engaged with us or with the local community in light of its actions and our concerns.

We are requesting that the Planning Authority write to Eircam Limited in the strongest terms reprehending the actions of the company to date in carrying out development in blatant contravention of its planning permission and insisting that no further works are undertaken until it has resolved all of the unauthorised development and proven all further works have the benefit of prior planning permission.

We forward to hearing from you.

Yours faithfully,

for Doreen Thomson and Peter Thomson,

4 Priory Grove,

Kells,

County Kilkenny

R95 VY05









*Sarah Kelly*  
Planning Section

Is mise le meas,

Please find enclosed receipt for €80.00 confirming payment of the application fee.

I wish to acknowledge receipt of your application in connection with the above on the 17/11/2021 and inform you that the matter is receiving attention. You will be informed of the Councils' decision in due course.

A Chara,

**Re: Application for Declaration under Section 5 of the Planning and Development Act 2000-2021  
Development Address: Eitrom Exchange, Haggard Road, Kells Co. Kilkenny.**

Doreen & Peter Thomson,  
4 Priory Grove,  
Kells,  
Co. Kilkenny.

Our Ref.: DEC 666

24.11.2021

Pobail agus Aiteanna Inbhuanaithe a Chruthú

Halla an Chontae Chill Chainnigh  
Halla an Chontae Sraid Eoin Cill Chainnigh



Kilkenny County Council  
County Hall John Street Kilkenny

Creating Sustainable Communities and Places





Should all correspondence be sent to the Agents address? Yes { } No { }	
Name	Address:
Telephone No:	Fax No. or E-mail Address:

PERSON/AGENT ACTING ON BEHALF OF APPLICANT (IF ANY): n/a

Applicant Name	Doreen Thomson and Peter Thomson
Address:	4 Priory Grove, Kells, County Kilkenny
Contact Telephone No:	0868196856 (Peter Thomson)
Fax No. or E-mail Address, if any:	-

**APPLICANT DETAILS:**

*(This is a non-statutory advice application prepared by Kilkenny County Council for the purpose of advising people what information is required for a decision to be made under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Acts 2000-2018)*

**Application Form for Declaration and Referral on Development and Exempted Development under Section 5 of the Planning and Development Acts 2000-2018**

Tel: 056 7794000 / Fax: 056 7794004  
 Email: [Planning@kilkennyco.co.ie](mailto:Planning@kilkennyco.co.ie) /  
 Website: [www.kilkennyco.co.ie](http://www.kilkennyco.co.ie)



COMHAIRLE CHONTAE CHILL CHAINNIGH

Kilkenny County Council  
 County Hall  
 John Street  
 Kilkenny



Section 5 of the Planning and Development Acts 2000-2018 states that if any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of these Acts, any person may, on payment of the prescribed fee, request in writing from the relevant Planning Authority a declaration on that question, and that person shall provide to the Planning Authority any information necessary to enable the authority to make its decision on the matter:

**Sample Question:** Is the construction of shed at Hebron Road, Kilkenny development and if so, is it exempt development?

**PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:**

**Completion of this question is essential. Failure to do so will invalidate your application.**

**ADDITIONAL INFORMATION WHICH MAY ASSIST THE PLANNING AUTHORITY:**

Please see attached sheet

The Applicant is advised to set out the matter on which the declaration is sought, as comprehensively as possible using additional pages if necessary and should use additional material including plans and drawings as appropriate to give as full account as possible on this matter.





**LOCATION ADDRESS OF DEVELOPMENT:**

Site Location Map must be attached

Eircom Exchange, Haggard Road, Kells, County Kilkenny - Please see attached location plan and layout drawing

**SITE AREA:**

Area of site to which the application relates in hectares c 0.0016ha plus area for cables etc ha

**WHERE THE APPLICATION RELATES TO A BUILDING OR BUILDINGS**

IF AVAILABLE: n/a

Gross floor space of any existing building(s) in m<sup>2</sup>:

Gross floor space of proposed works in m<sup>2</sup>:

Gross floor space of work to be retained in m<sup>2</sup> (if appropriate):

Gross floor space of any demolition in m<sup>2</sup> (if appropriate):

Overall height of any existing structure in metres:

Overall height of any proposed structure in metres:

Distance of existing or proposed structure to nearest dwelling(s) not being the applicants, where appropriate:

**WHERE THE APPLICATION REFERS TO A MATERIAL CHANGE OF USE OF ANY LAND OR STRUCTURE OR THE RETENTION OF SUCH A MATERIAL CHANGE OF USE: n/a**

Details of Existing of Previous use:

Proposed use (or use it is proposed to retain)

Nature and extent of any such proposed use (or use it is proposed to retain)

**LEGAL INTEREST OF APPLICANT IN THE LAND OR STRUCTURE:**

Please tick appropriate box to show applicant's legal interest in the land or structure

A. Owner	
B. Occupier	

Where legal interest is 'Other', please expand further on your interest in the land or structure:  
Neighbour to the works



Name & Address of Landowner and/or Occupier if not the Applicant:  
 Eircom, Estates/ Legal Department, 2022 Bianconi Avenue, Citywest Business Campus  
 D24 HX03, Dublin 24

**DEVELOPMENT DETAILS**

Please tick appropriate box	
Yes	No
	N
Does the proposed development consist of work to a protected structure and/or its curtilage or proposed protected structure and/or its curtilage?	
	N
Does the proposed development involve the demolition of any habitable house or part thereof?	
	N

Are you aware of any valid planning applications previously made in respect of this land/structure?  
 Yes  No

If Yes – Please provide Planning Register Ref. No(s) if known:

20/394

The Applicant is advised that notwithstanding the completion of the above application form, that the Planning Authority may require the Applicant to submit further information or particulars with regard to the request in order to enable the Planning Authority to issue the declaration on the question.

The Applicant is also advised that the Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.

Subject to the above, the Planning Authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request and where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.



Kilkenny County Council  
Planning Department  
County Hall  
John Street  
Kilkenny

**COMPLETED APPLICATIONS TO BE RETURNED TO:**

- Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas) with location of works clearly marked in red
- A Site Layout Plan (Scale 1:500)
- Drawings of the development (Scale 1:50)
- All drawings to differentiate between the original building, all extensions and proposed development
- Copy of Planning Permission, Fire Safety Certificate or any other statutory approval already obtained, where applicable
- Prescribed Fee of €80.00 Euro

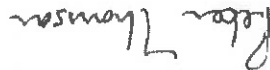
**THE FOLLOWING DOCUMENTATION IF AVAILABLE SHOULD BE SUBMITTED WITH YOUR APPLICATION:**

Failure to complete this form or attach the necessary prescribed documentation, or the submission of incorrect information or omission of required information, will lead to the invalidation of your application.

*Applicant or Agent as appropriate*

Signed: 

Date: 17 November 2021



I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct and accurate:

I hereby declare that, to the best of my knowledge and belief, the information

**APPLICATION FEE ATTACHED:**

Fee payable €80.00: Payment must be made by Cash or Cheque which should be made payable to Kilkenny County Council



## Section 5 supporting information

Question posed:

1(a) Were the works involved in developing a telecommunication structure foundation/ base in its current location at Kells Eircom Exchange, Haggard Road, County Kilkenny "development" within the meaning in the Planning and Development Act 2000 - 2021 and, if so, were the works involved "exempted development" under the Planning and Development Act 2000 - 2021 or the Planning and Development Regulations 2001 - 2021; and

1(b) If the works referred to in 1(a) were "development" within the meaning in the Planning and Development Act 2000 - 2021 and deemed to be the works which were not "exempted development" under the Planning and Development Act 2000 - 2021 or Planning and Development Regulations 2001 - 2021, was the laying of cables (including fibre optic cables), wire, tube, pipe, duct or similar thing of any device containing any such cable, wire, tube, pipe, duct or similar thing, from the road and/or Eircom Exchange building to the telecommunication structure foundation/ base, "exempted development" under the Planning and Development Act 2000 - 2021 or the Planning and Development Regulations 2001 - 2021?

1(a) telecommunication structure foundation/ base

Eircom Limited applied to Kilkenny County Council for planning permission on 25 June 2020 for a development described as:

"the replacement of an existing 10m wooden pole for a 15 metre high free standing communications structure with its associated antennae, communication dishes, ground equipment and all associated site development works. The development will form part of Eircom Ltd's existing telecommunications and broadband network" at Kells Eircom Exchange, Haggard Road, Kells, Co. Kilkenny" (planning application ref: 20/394)";

On 26 November 2021, Kilkenny County Council refused planning permission ref: 20/394 for the following reason:

"Having regard to the location of the site within the village of Kells in very close proximity to existing dwellings and given the height and diameter of the pole and associated antennae of the proposed telecommunication structure it is considered the proposed development would seriously injure the amenities, and potentially depreciate the value, of property in the vicinity of the proposed development. The proposed development would therefore be contrary to the proper planning and sustainable development of the area".





Agents for Eircom Limited appealed the refusal of planning application ref: 20/394 to An Bord Pleanála.

On 17 June 2021 An Bord Pleanála issued its Decision to Grant Planning Permission subject to 6 conditions. Of particular relevance to this Section 5 application is Condition 1, which requires the development to be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in to comply with the other conditions.

Between 10<sup>th</sup> and 13<sup>th</sup> September 2021 (inclusive) works were carried out involving excavations to the rear of the Eircom Exchange.

On 15<sup>th</sup> November 2021 a concrete mixer lorry arrived and concrete was poured into excavations at the rear of the building.

The filling of the excavation at the rear of the Eircom Exchange with concrete revealed that the foundation/ base for the telecommunication structure was not in the location shown on the layout plan permitted under planning permission ref: 20/394.

The permitted location of the foundation/ base for the telecommunication structure was at the southwest corner of the Eircom Exchange site. It was a 4m x 4m square area, which was the extent of the red line planning application site boundary. The rest of the Eircom Exchange site, which is the extent of its ownership, was outlined in blue. From the public road and along the northern side of the Eircom Exchange building, a proposed cable or similar connection(s) was shown leading to the foundation/ base for the telecommunication structure.

To develop the foundation/ base for the telecommunication structure in its permitted location would have, firstly, necessitated the removal of the existing wooden telecommunication pole and attached dish. The removal of this pole in advance of the foundation/ base for the telecommunication structure was, itself, obviously a part of the permitted development.

The foundation/ base for the telecommunication structure which has been developed, is completely outside the planning application site red line boundary. It is located to the rear of the north west corner of the Eircom Exchange building. Works have also been carried out to install cables along the northern side of the Eircom Exchange building as far as the developed foundation/ base for the telecommunication structure. The existing wooden telecommunication pole with dish remains in situ.

As a result of the revised location of the foundation/ base, the telecommunication structure, which in its permitted location would have been 8m from the nearest habitable house to the northeast, will be only 4m from that house. In other words, if



the telecommunication structure is to be erected on the developed foundation/  
base, it will be 4m from its permitted location.

Condition 1 of the planning permission requires Eircom to develop the permitted  
development in accordance with the permitted plans and particulars on the planning  
application site.

With any planning permission there is scope for a minor degree of flexibility to facilitate  
"immaterial deviations" from a planning permission. These may occur when, for  
example, an unforeseen circumstance arises when implementing a planning  
permission which could not have been foreseen at the design stage, thereby requiring  
the developer to depart in an immaterial way from the permitted plans and  
particulars.

In the judgement from *Lever Finance Ltd v Westminster Corporation*<sup>1</sup> which was  
referred to in *O'Connell vs Dungan Energy Ltd*<sup>2</sup> and other cases, it was stated - "In  
my opinion a planning permission covers work which is specified in the detailed plans  
and any immaterial deviation therein. It is obvious that, as the developer proceeds  
with the work there will necessarily be variations from time to time. It should not be  
necessary for the developers to go back to the planning authority for every immaterial  
deviation. The permission covers any variation which is not material".

In *Cork County Council v Cliftonhall Limited*<sup>3</sup>, permission had been given for the  
construction of 6 apartment blocks. The ridge height of one apartment block was  
between 0.5m and 1.3m higher than the ridge height of 1.5m shown on the plans.  
Finnigan J. said in respect of the height difference, that the deviation was 7 per cent  
in the case of one of six blocks but held that "with some reluctance" this was  
immaterial in the context of six apartment blocks.

In *Bailey v Kilvineane Windfarm Limited*<sup>4</sup>, three wind turbines on a windfarm were  
located 19m to 20m from their permitted locations. Hogan J. accepted the reason for  
the change to give the turbines firmer foundations, but stated this did not mean the  
construction of the turbines nearby represented a non-material deviation from the  
term of the planning permission. He continued:

(para 79), "there may well indeed be cases where the construction of a turbine 20m  
away from the original location might well amount to a material breach of the  
terms of the planning permission. Given, however, that the movement of the turbines  
in the present case was clearly relevant on planning grounds and also actually or

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<sup>1</sup> [1973] All E.R. 496 at 500; [1970] 3 WLR 732 at 738.  
<sup>2</sup> Unreported High Court, February 27/2001.  
<sup>3</sup> [2001] IEHC 825.  
<sup>4</sup> [2016] IECA at paras 82-83



In terms of the relevance of the considerations in *Bailey v Kilvineane Windfarm Limited*, in the current case there was strong objection to the visual impact of the telecommunication structure and the equipment to be attached to it and to its proximity to existing houses. The moving of the structure will exacerbate the situation; for our elderly neighbour living closest to it, the anxiety and stress of living even closer to the structure than was the case in its permitted location and, in our own case, the increased adverse visual impact of the structure from our house and garden due to its relocation away from the previous semi-backdrop of tall trees into the open skyline. In *Wicklow County Council v Forest Fencing Ltd*, Charlton J. found that the development carried out was not in conformity with the planning permission claimed. In his assessment, he indicated that, whereas planning permission should be interpreted with some degree of flexibility so as to allow for the practical reality that buildings can sometimes not be built precisely as the plans indicate, this tolerance only extends as far as "immaterial deviations". He emphasised that in considering

deviation from 8m to 4m. occupied by an objector to the original mast has been halved as a result of the of the proposed telecommunication structure to the nearest habitable house *Limited* the height difference was 7% higher than permitted. In this case, the proximity to the current situation, the principles still apply. In *Cork County Council v Cliftonhall* While the scale of the overall projects referred to above are not directly comparable

make a case that the design was flawed or impractical. planning application drawings which were permitted and, therefore, they cannot developers for Eircom, Delmech, were the designers of the scheme and prepared the circumstances on the site or in the surrounds which would warrant a change. The removed to establish the underground conditions and there has been no change in telecommunication structure itself. The existing wooden pole and dish were not the foundation/ base for the telecommunication structure or the proposed In this current Section 5 case, there is no explanation for the change in the location of of larger turbines on third parties was such as to represent a material deviation.

The court concluded, on the facts, that the potential impact of the deviations in terms of sightlines (and other visual impacts), noise, shadow flicker and the overall footprint of third parties or be such that it would affect planning considerations" deviation of such materiality that it would realistically impact on the rights of interests has been approached from a practical and common-sense perspective; is the question of material/ non-material deviation from the terms of an existing permission (para 80) "A consideration of the case-law on this topic to date suggests that the

case". potentially impacted on third parties (such as local neighbours), this is not such a



whether a deviation was material, it was necessary to have regard to the importance which the planning legislation attaches to the rights of owners and occupiers of neighbouring property. "In general, what is material in relation to a densely occupied suburban area, or a block of flats, may not be material where one is dealing with an extensive site. What is material where neighbours are affected due to the proximity of a development, may be immaterial where they are unaffected. It is difficult to see variations which materially affect neighbours to a development, which trespass outside the site boundary, which exercise rights of easements without permission by supporting structures on third party property, or which materially affect existing rights of easement, as being minimal. Nor could it be regarded as necessarily immaterial where a letter of support of a planning application promises to obtain agreement as to the way a building proposed may be joined to a neighbouring property, but in fact agreement is absent. This is not an attempt to cut down in any way the court's discretion in approaching its equitable jurisdiction to grant injunctive relief. Each case must be looked at carefully because orders of this kind are very serious"

In the current case, there is nothing to indicate that the proposed foundation/base for the telecommunication structure or the proposed telecommunication structure itself could not be constructed in its permitted location. The Eircom Exchange site is limited in site area and located within a relatively dense urban village context and very close to neighbouring properties, in particular habitable dwellings the occupants of which opposed the original development due to its proximity to their homes and the visual impacts. Also, and crucially, the foundation/base for the telecommunication structure and the proposed telecommunication structure itself has been developed entirely outside the red line of the application site.

The importance of the red line boundary was considered in *PM Cantwell v McCarthy*,<sup>7</sup> a case concerning a planning application for housing where the proposed stormwater pipe to serve the development was located outside the application site red line boundary. The author of "Simons on Planning Law"<sup>8</sup> observes on this case that, "... it would not be safe to regard the judgement on the case as authority for any general principle.... The better view remains, therefore, that all works in respect of which planning permission is sought should be included within the red line".<sup>8</sup>

It must also be a material consideration that the developer, Delmech, was the designer of the "design and build" project and prepared the planning application drawings which received planning permission. It cannot make a case that the design was flawed or impractical having surveyed the site, familiarised itself with the site ground conditions, the site characteristics, surrounds and constraints and budgeted for the design.

<sup>6</sup> My emphasis

<sup>7</sup> [2005] IEHC. 351; unreported, Murphy J., November 1, 2005

<sup>8</sup> Simons on Planning Law, Third Edition (David Browne), Round Hall, 2021





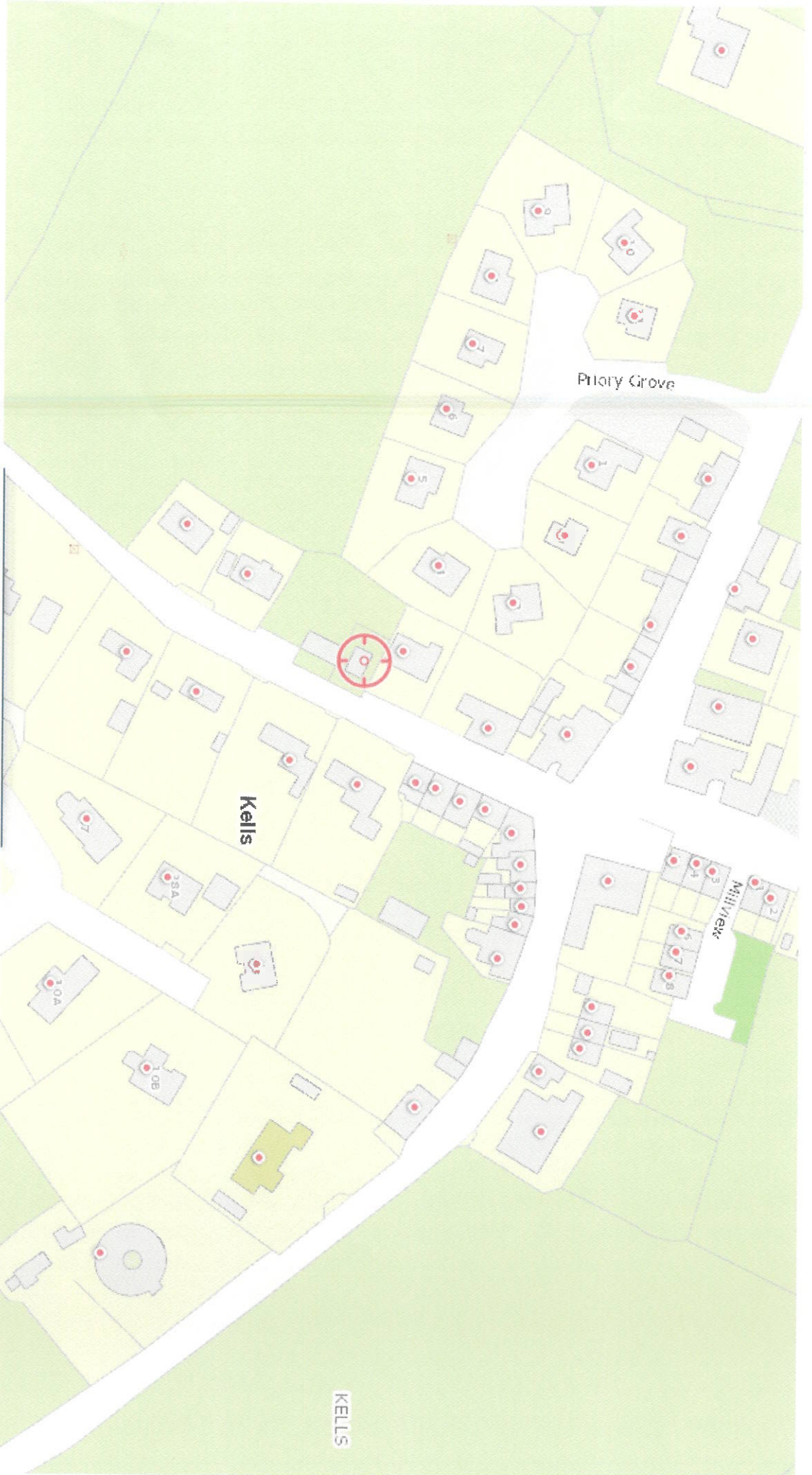
Overall, it is considered there were no grounds for Eircom to deviate from the permitted plans and particulars, let alone develop the proposed foundation/base for the telecommunication structure outside the planning application site red line boundary, in a location where the impacts of the development will give rise to new planning considerations and greater negative impacts on the occupants of neighbouring property. The changes are not immaterial deviations to the development permitted under planning permission ref: 20/394. Therefore, the works undertaken comprising excavating and developing the foundation/base for the telecommunication structure involved "development" which was not exempt development. Therefore, the works comprise unauthorised development.

### 1(b) the laying of cables etc

It follows that the cables etc, developed from the road and/ or Eircom Exchange building to the telecommunication structure foundation/base are unauthorised.

The planning application documents state that these works were to be undertaken as exempted development having regard to Class 31 of the Planning and Development Regulations 2021 as amended. However, a statutory undertaker availing of exemptions under this Class can only undertake exempted development associated with "authorised" structures. If the foundation/base for the telecommunication structure is unauthorised, Eircom cannot avail of the exemption and the works carried out at the Eircom Exchange involving cables are also unauthorised and cannot be exempted development.





Location plan





EXISTING RESIDENTIAL DWELLING

EXISTING ER MANHOLES

EXISTING ER EXCHANGE BUILDING

EXISTING HEDGE ROW

EXISTING 15B WOODEN POLE WITH C/H CABLE

EXISTING FOOTPATH

EXISTING STEPS

EXISTING PEDESTRIAN ACCESS GATE

+53.2m ASL

PROPOSED 15B WOODEN POLE WITH C/H CABLE

PUBLIC ROAD

EXISTING STONE WALL

PROPOSED LOCATION OF ER MOBILE PLANNING APPLICATION AND NOTICE

PROPOSED ER MOBILE CABINET

EXISTING TIMBER FENCE

PROPOSED ER MOBILE 15B WITH BELMCC MONOPOLE TO REPLACE EXISTING WOODEN POLE

SITE BOUNDARY

PROPOSED ER MOBILE 3 NO ANTENNAS TO BE INSTALLED ON HEADFRAME SUPPORT POLES AT TOP OF MONOPOLE

PROPOSED ER MOBILE 3 NO IRPUS TO BE INSTALLED ON REAR OF ANTENNA SUPPORT POLE

EXISTING TELECOMS WOODEN POLE TO BE DECOMMISSIONED AND REMOVED

EXISTING HEDGE ROW OVER TIMBER FENCE

PROPOSED 15B WOODEN POLE WITH C/H CABLE

LAND-ORG HOLDING

EXISTING ER WOODEN POLE WITH C/H CABLE

PROPOSED 15B OPERATIVE CABINET

EXISTING OLD RESIDENTIAL DWELLING



+64m ASL

4000

2500

200

4000

1400



Eircom  
Estates/ Legal Department,  
2022 Bianconi Avenue,  
Citywest Business Campus  
D24 HX03  
Dublin 24

17 November 2021

Dear Sir/ Madam,

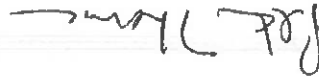
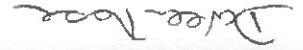
**Eircom Development at Haggard Road, Kells, County Kilkenny**

Please be advised that today we lodged an application for a Declaration under Section 5 of the Planning and Development Act 2000 – 2021 in respect of the following question:

1(a) Were the works involved in developing a telecommunication structure foundation/ base in its current location at Kells Eircom Exchange, Haggard Road, County Kilkenny "development" within the meaning in the Planning and Development Act 2000 - 2021 and, if so, were the works involved "exempted development" under the Planning and Development Act 2000 - 2021 or the Planning and Development Regulations 2001 – 2021; and

1(b) If the works referred to in 1(a) were "development" within the meaning in the Planning and Development Act 2000 - 2021 and deemed to be the works which were not "exempted development" under the Planning and Development Act 2000 - 2021 or Planning and Development Regulations 2001 - 2021, was the laying of cables (including fibre optic cables), wire, tube, pipe, duct or similar thing of any device containing any such cable, wire, tube, pipe, duct or similar thing, from the road and/or Eircom Exchange building to the telecommunication structure foundation/ base, "exempted development" under the Planning and Development Act 2000 - 2021 or the Planning and Development Regulations 2001 – 2021?

Yours faithfully,



Doreen and Peter Thomson,  
4 Priory Grove,  
Kells,  
County Kilkenny  
R95VY05











Our Ref: ENF21112

Date: 1st December, 2021

Creating Sustainable Communities and Places

Pobail agus Aiteanna Inbhuanaithe a Chruthú

Taila an tUachtair Stairiúil le hInbhuanaíocht

County Wick Council Wick County

**WARNING LETTER**

**PLANNING AND DEVELOPMENT ACT 2000 (as amended)**

**SECTION 152 PLANNING AND DEVELOPMENT ACT 2000 (as amended)**

**RE. Alleged non-compliance with Conditions 1, 4, and 5 of Council Planning**

**Reference 20/394 (An Bord Pleanála Reference PL10.308931) at Kells Eircom**

**Exchange, Haggard Road, Kells, Co. Kilkenny.**

Managing Director,

Eircom Limited,

2022 Bianconi Avenue,

Citywest Business Park,

Dublin 24,

D24 HX03

A Chara,

You are advised that it has come to the attention of the Planning Authority that unauthorised development may have been, is being or may be carried out at the above address.

Having had regard to the above, it appears to the Planning Authority that the unauthorised development comprises the following:

**Alleged non-compliance with Conditions 1, 4, and 5 of Council Planning Reference 20/394 (An Bord Pleanála Reference PL10.308931) at Kells Eircom Exchange, Haggard Road, Kells, Co. Kilkenny.**

which is considered an offence under the Planning and Development Act 2000 (as amended).

Please note that in accordance with Section 152, subsection 4 (b) of the Planning and Development Act 2000 (as amended), you may make submissions or observations in writing to the Planning Authority regarding the above, not later than 4 weeks from the date of service of this Warning Letter.

This letter is a Warning Letter issued under Section 152 of the Planning and Development Act 2000 (as amended) and a decision in relation to enforcement under Section 153 will be taken in due course having regard to any representations made by you within the 4 week period specified above.

The first condition is that the business is a going concern. This means that the business must be carrying on a trade or profession and must be intended to continue to do so.

The second condition is that the business is a sole trader or a partnership. This means that the business must not be a company or a limited liability partnership.

The third condition is that the business is a small business. This means that the business must have a turnover of less than £1 million and must have fewer than 50 employees.

Exchange Trading Board (ETB) for the purpose of the Act. The Act also provides that the business must be a sole trader or a partnership and must not be a company or a limited liability partnership.

The fourth condition is that the business is a going concern. This means that the business must be carrying on a trade or profession and must be intended to continue to do so. The fifth condition is that the business is a sole trader or a partnership.

For HKD  
Date of  
City and Province (etc)  
SOSS Business Address  
Business Name  
Managing Director

Exchange Trading Board (ETB) for the purpose of the Act. The Act also provides that the business must be a sole trader or a partnership and must not be a company or a limited liability partnership.

MANAGING DIRECTOR

DATE OF SIGNATURE

DATE: 10 December 2021

Please further note that officials of the Planning Authority may at all reasonable times enter onto the lands for the purposes of inspection.

Please note that an Enforcement Notice requiring the cessation, demolition or discontinuance of the development may be issued if the Planning Authority considers that unauthorised development may have been, is being, or may be carried out.

Please also note that in the event of a decision to institute enforcement proceedings you will be liable for penalties as set out in Section 156 of the Planning and Development Act 2000 (as amended), details of the penalties involved for failure to comply with an Enforcement Notice are:

1. On conviction on indictment, to a fine not exceeding €12,700,000 or to imprisonment for a term not exceeding 2 years, or to both and to a fine not exceeding €12,700 or to imprisonment for a term not exceeding 2 years or both for each day on which the offence so continues.

2. On summary conviction to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months, or to both and to a fine not exceeding €1,500 or to imprisonment for a term not exceeding 6 months or both, for each day on which the offence so continues.

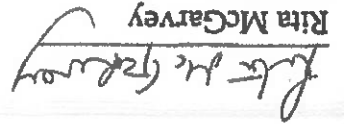
3. On conviction on indictment of the construction of an unauthorised structure, to a fine of €12,700, or the cost of construction of the structure, whichever is the lesser.

4. On summary conviction of the construction of an unauthorised structure, to a fine of €2,500 or the cost of construction of the structure, whichever is the lesser.

In addition to these penalties, any costs reasonably incurred by the Planning Authority in relation to enforcement proceedings may be recovered from a person to whom an Enforcement Notice is issued or where Court Action is taken.

Please quote the reference, ENF21112, in your written response.

Mise, le meas

  
Rita McGarvey

Staff Officer  
Planning

056 7794010



Eircom  
Estates/ Legal Department,  
2022 Bianconi Avenue,  
Citywest Business Campus  
D24 HX03  
Dublin 24

15 November 2021

Dear Sir/ Madam,

**Unauthorised Eircom Development at Haggard Road, Kells, County Kilkenny**

We live to the rear of your Eircom Exchange on Haggard Road in Kells, County Kilkenny and have established that your contractors, Delmec, are not implementing planning permission ref: 20/394 (ABP ref: PL10. 308931) and are building a mast foundation structure outside the site of that planning application.

We have notified Kilkenny County Council Planning Department of this unauthorised development and requested it take immediate steps to stop any further unauthorised development and address the issue of the unauthorised works undertaken to date.

We require you to confirm to us within 48 hours of signed receipt of this letter that all unauthorised works have ceased and that no further works will take place without the regularisation of the unauthorised works under the planning codes and with the necessary permission.

We reserve the right to take further action through legal channels if we do not receive the confirmation sought.

We enclose a copy of the letter sent to Kilkenny County Council Planning Department.

Yours faithfully,

 Peter Thomson

Doreen and Peter Thomson,

4 Priory Grove,

Kells,

County Kilkenny

R95VY05

Cc Delmec,  
Unit 10A, Barrowside Business Park,  
Sleaty Road,  
Gratigcullen,  
Carlow, R93 E3W7















We enclose a copy of a letter sent to Eircom and copied to Delmec and look forward to hearing from you.

Yours faithfully,

*Doreen Thomason*

*Rob Thomason*

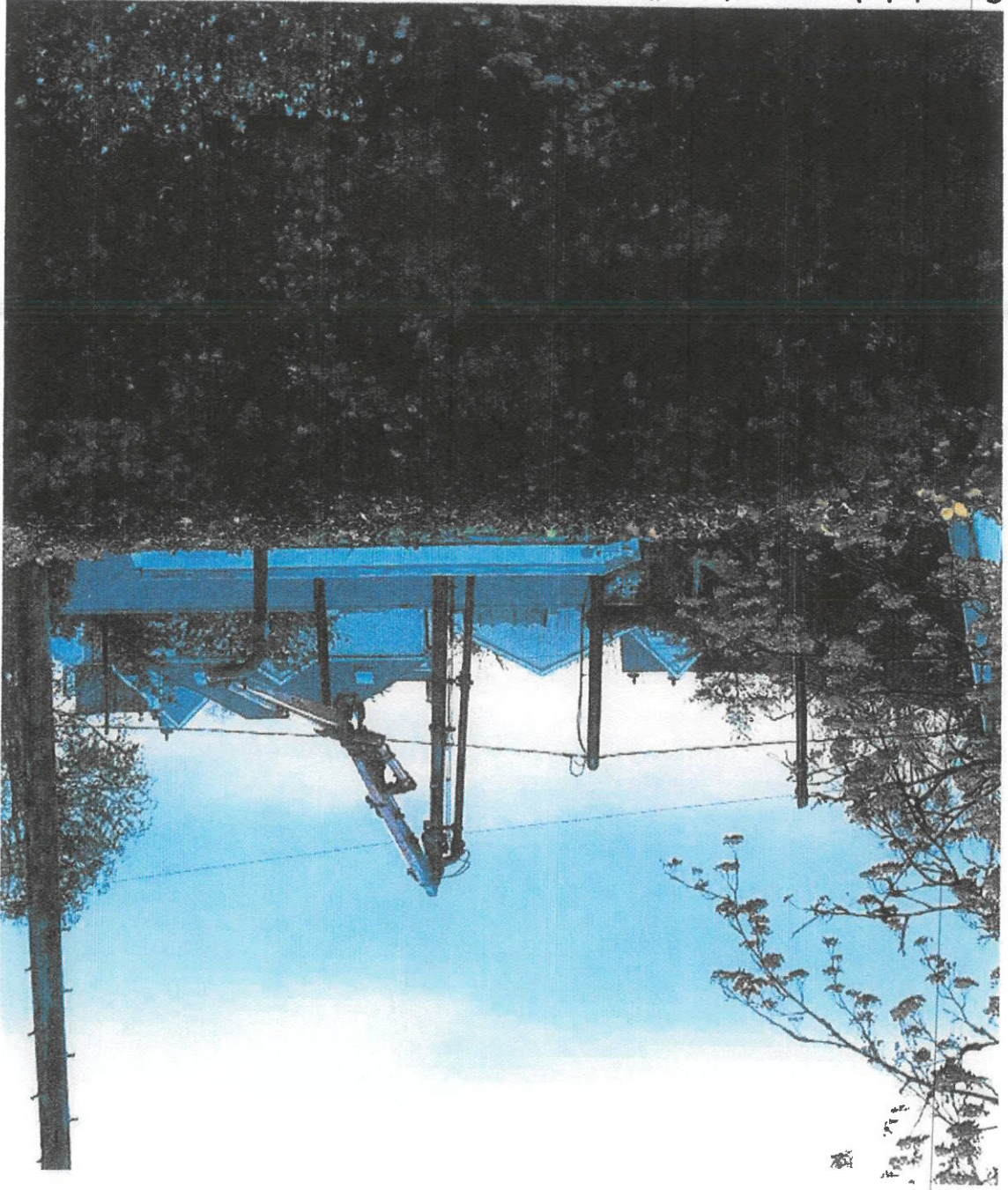
Doreen Thomason and Peter Thomason,

4 Priory Grove,

Kells,

County Kilkenny

R95 VY05



Concrete being pumped over the exchange into the excavation at 8.30am, 15 November 2021



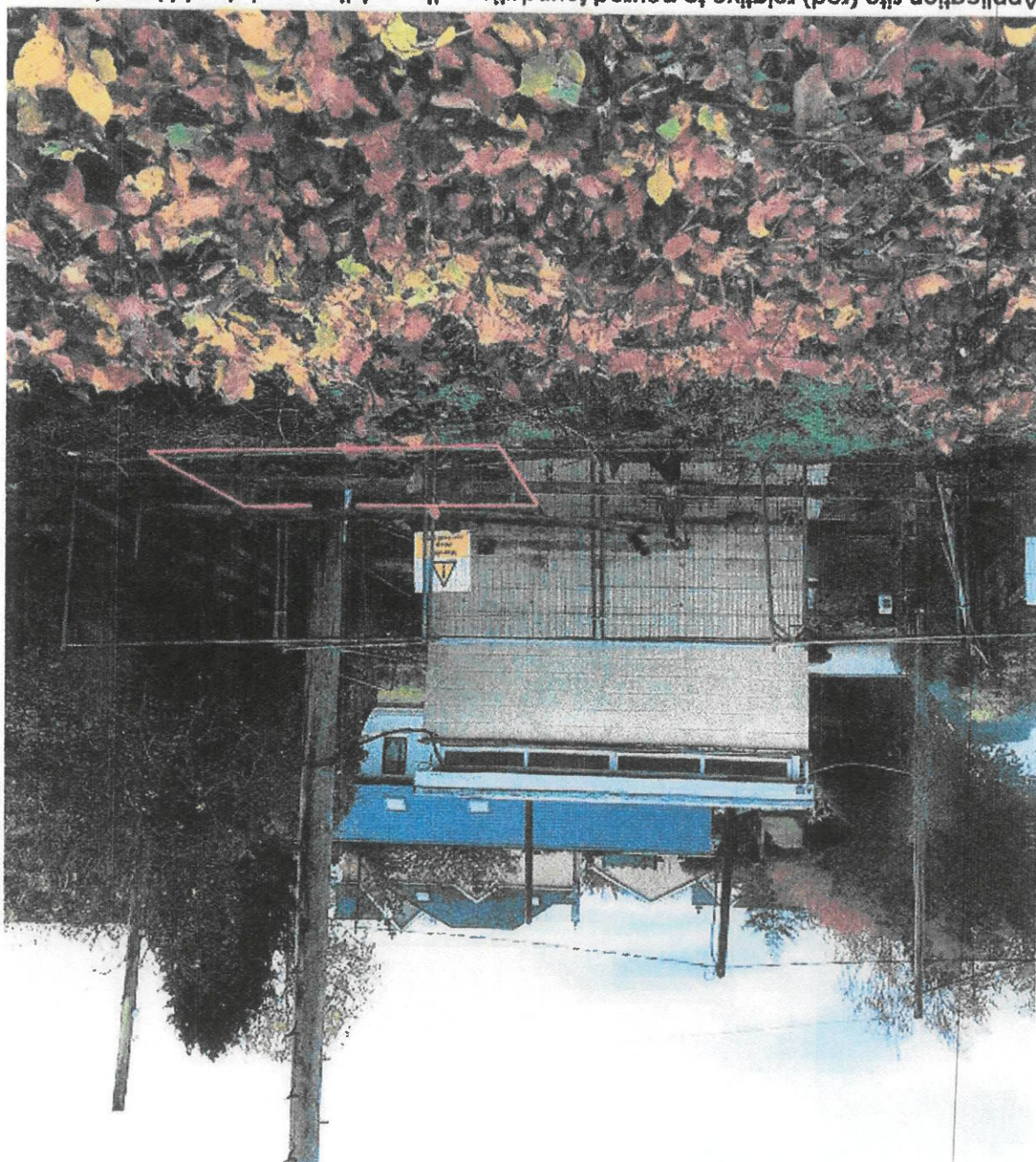


View over our back boundary hedge of the location of the mast foundation









Application site (red) relative to poured foundation – the existing mast should have been removed to pour the permitted foundation within the red line application site boundary



Delmec,  
Unit 10A, Barrowside Business Park,  
Sleaty Road,  
Graigcullen,  
Carlow,  
R93 E3W7

15 November 2021

Dear Sir/ Madam,

**Unauthorised Eircom Development at Haggard Road, Kells, County Kilkenny**

Please find attached a copy correspondence sent today to Eircom and Kilkenny  
County Council.

Yours faithfully,

Doreen and Peter Thomson,  
4 Priory Grove,  
Kells,  
County Kilkenny  
R95VY05



Delmech,  
Unit 10A, Barrowside Business Park,  
Steady Road,  
Graigcullen,  
Carlow,  
R93 E3W7

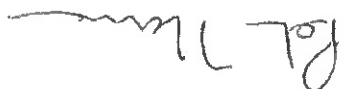
15 November 2021

Dear Sir/ Madam,

**Unauthorised Eircom Development at Haggard Road, Kells, County Kilkenny**

Please find attached a copy correspondence sent today to Eircom and Kilkenny  
County Council.

Yours faithfully,



Doreen and Peter Thomson,  
4 Priory Grove,  
Kells,  
County Kilkenny  
R95VY05



Enforcement Section,  
Planning Department,  
Kilkenny County Council,  
County Hall,  
John Street,  
Kilkenny

By email

30 November 2021

Dear Sir/ Madam,

**Unauthorised Development at Haggard Road, Kells, County Kilkenny**

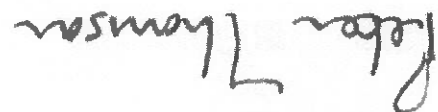
We wrote to you on 15 November 2021 in respect of unauthorised development at the Eircom Exchange on Haggard Road in Kells, in particular that the contractors for Eircom, Delmec, were not building in accordance with the terms of their permission. We understand your enforcement staff have been on site to assess the situation.

We also wrote to Eircom on 15 November 2021 advising them of the situation and have had no communication back. It remains a real concern to us that the contractors may return to the site at any time and proceed to erect the mast on the unauthorised mast foundation.

Could you please advise on the outcome of your findings having reviewed the situation on-site and what action has or will be taken. We would also be grateful if you could advise if Eircom has been in contact with the Council and what action it proposed to take, if any, at this stage.

We forward to hearing from you.

Yours faithfully,



for Doreen Thomson and Peter Thomson,  
4 Priory Grove,  
Kells,  
County Kilkenny  
R95 VY05















We enclose a copy of a letter sent to Eircom and copied to Delmec and look forward to hearing from you.

Yours faithfully,

Doreen Thomson and Peter Thomson,  
4 Priory Grove,  
Kells,  
County Kilkenny  
R95 VY05



Concrete being pumped over the exchange into the excavation at 8.30am, 15 November 2021





View over our back boundary hedge of the location of the mast foundation







Application site (red) relative to poured foundation – the existing mast should have been removed to pour the foundation within the red line application site boundary



